

No. 10956

United States

Circuit Court of Appeals

For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,  
Appellant,

vs.

KINNER MOTORS, INC.,  
Appellee.

Transcript of Record

Upon Petition for Enforcement of an Order of the  
National Labor Relations Board

FILED

MAR 26 1945

PAUL P. O'BRIEN,  
CLERK



No. 10956

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Circuit Court of Appeals  
For the Ninth Circuit.

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National Labor Relations Board





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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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BOARD'S EXHIBIT No. 1-A

N.L.R.B. 29

(Revised 8-9-41)

United States of America  
Before the National Labor Relations Board  
21st Region

Case No. 21-C 2307

Date Filed May 15, 1943

In the Matter of

KINNER MOTORS, INC.

and

INTERNATIONAL ASSOCIATION OF MA-  
CHINISTS, DISTRICT LODGE NO. 94, for  
and on behalf of Lodge No. 311, AFL.

CHARGE

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Kinner Motors, Inc., at 635 W. Colorado Blvd., Glendale, California, employing 400 workers in manufacture of aircraft motors, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (2) of said Act, in that said company, by its officers, agents and employees, formed among its employees at its Glendale, California plant a labor organization known as Kinner Motors Employees Asso-

ciation, Inc., on or about March 15, 1943, and at all times since said date has dominated and interfered with the operation and administration of the said Kinner Motors Employees Association, Inc., and contributed financial and other support thereto, in violation of Section 8, subsection (2) of said Act.

By the acts set forth in the paragraph above and by other acts and statements, it, by its officers, agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed under Section 7 of the said Act in violation of Section 8, subsection (3) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE No. 94, for and on behalf of LODGE #311, AFL

By: ROSCOE V. ICKES,

Roscoe V. Ickes, Representative, 532 Maple Avenue,  
Los Angeles, California. Phone—MUTual 2389.

Subscribed and sworn to before me this 15th day of May, 1943. At Los Angeles, Calif.

QUENTIN OGREN

Quentin Ogren

Field Examiner, National  
Labor Relations Board.

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BOARD'S EXHIBIT No. 1-B

[Title of Board and Cause.]

Case No. 21-C-2307

Date Filed 12-13-43

COMPLAINT

It having been charged by International Association of Machinists, District Lodge No. 94, for and on behalf of Lodge No. 311, AFL, that Kinner Motors, Inc., hereinafter called the Respondent, has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, 49 Stat. 449, hereinafter called the Act, the National Labor Relations Board, by the Regional Director for the Twenty-first Region, designated as agent of said Board by its Rules and Regulations—Series 2, as amended, hereby issues its Complaint and alleges the following:

1. Respondent is and at all times herein alleged has been a corporation organized and existing under and by virtue of the laws of the State of California, having its principal office and place of business at

635 West Colorado Boulevard, Glendale, California, hereinafter called the plant, where it is engaged in the manufacture of aircraft engine parts and the assembly of aircraft engines.

2. Respondent, in the course and conduct of its business, as set forth in paragraph 1 above, causes and has continuously caused large quantities of materials to be purchased and transported in interstate commerce from and through states of the United States other than the State of California to its plant in the State of California and causes and has continuously caused large quantities of products manufactured at its plant to be sold and transported in interstate commerce into and through states of the United States other than the State of California.

3. (a) International Association of Machinists, District Lodge No. 94, for and on behalf of Lodge No. 311, AFL, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

(b) Kinner Motors Employees Association, Inc., hereinafter called the Association, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

4. Respondent, by its officers, agents, and employees, while engaged at its plant as described in paragraphs 1 and 2 above, did, on or about March 15, 1943, inaugurate, sponsor, promote, and form the Association among its employees and has at all times since that date, up to and including the date of this Complaint, dominated and interfered



with the administration of said Association and contributed financial and other support thereto.

5. Respondent, on or about June 16, 1943, entered into a written agreement with the Association, the terms of which concern wages, rates of pay, hours of employment, and other conditions of employment of Respondent's employees and establish the Association as the exclusive collective bargaining representative of said employees, which agreement by its terms has remained in full force and effect from on or about June 16, 1943, to and including the date of this Complaint.

6. Respondent, by its officers, agents, and employees, while engaged at its plant as described in paragraphs 1 and 2 above, from on or about February 1942 up to and including the date of this Complaint, expressed to employees its opposition to any labor organization except an employer-dominated organization, solicited and advised employees to join the Association, and attempted by means of threats to persuade employees to join the Association.

7. Respondent, by its acts and each of them, as set forth in paragraphs 4 and 5 above, did dominate and interfere with the formation and administration of a labor organization, to-wit, the Association, and did contribute financial and other support thereto, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (2) of the Act. Further, the agreement described in paragraph 5 above, is invalid, void, and illegal.

8. Respondent, by its acts and each of them, as

set forth in paragraphs 4, 5, and 6 above, did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

9. The aforesaid acts of Respondent, as set forth and described in paragraphs 4, 5, and 6 above, constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (2) and Section 2, subsections (6) and (7) of the Act.

10. The aforesaid acts of Respondent, as set forth in paragraphs 4, 5, and 6 above, occurring in connection with the operations of Respondent, described in paragraphs 1 and 2 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Wherefore, the National Labor Relations Board on the 26th day of November, 1943, issues its com-

plaint against Kinner Motors, Inc., Respondent herein.

(Seal)

ELWYN J. EAGEN

Elwyn J. Eagen, Regional Director, National Labor Relations Board, Twenty-first Region, 111 West Seventh Street, Los Angeles, California.

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BOARD'S EXHIBIT No. 1-C

Case No. 2-C-2307

Date 12-13-43

[Title of Board and Cause.]

NOTICE OF HEARING

Please Take Notice that on the 6th day of December at 10:00 A.M. 1943 on the Ninth Floor of the Board of Trade Building, 111 West Seventh Street, Los Angeles, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the Regional Director for the 21st Region, with offices at 111 West Seventh St., Los Angeles, California, acting in this matter as agent of the National Labor Relations Board an answer

to the said Complaint, within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the 21st Region on this 26th day of November, 1943.

(Seal) ELWYN J. EAGEN

Elwyn J. Eagen, Regional Director. National Labor Relations Board.

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BOARD'S EXHIBIT No. 1-J

Case No. 21-C-2307

Date 12-13-43

[Title of Board and Cause.]

ANSWER OF KINNER MOTORS, INC.

Comes Now the Respondent, Kinner Motors, Inc., and answering the complaint on file herein, denies and alleges as follows:

1. Admits all of the allegations of Paragraphs 1, 2 and 3 of the complaint.
2. Denies that the respondent, by its officers,

agents and/or employees, while engaged at its plant as described in Paragraphs 1 and 2 of the complaint did, on or about March 15, 1943, or at any other time or at all, inaugurate, sponsor, permit and/or form the Association among its employees, and denies that it has at all times since that date up to and including the date of this complaint, dominated and/or interfered with the administration of said Association and/or contributed financial and/or other support thereto.

2a. Admits the allegations of Paragraph 5.

3. Answering Paragraph 6 this Respondent denies that it, by its officers, agents and/or employees, while engaged at its plant as described in Paragraphs 1 and 2 of the complaint, from on or about February, 1942, up to and including the date of this complaint, or at any other time or at all, expressed to its employees its opposition to any labor organization, except an employer-dominated organization, solicited and/or advised employees to join the Association and/or attempted, by means of threats, to persuade employees to join the Association.

4. Answering Paragraph 7 this Respondent denies that it, by its acts and/or each of them, as set forth in Paragraphs 4 and 5 of the complaint, did dominate and/or interfere with the formation and administration of a labor organization to wit: the Association, and denies that it did contribute financially and/or otherwise thereto, and denies that it did thereby, or in any other manner, engage in and/or is thereby engaging in, unfair

labor practices within the meaning of Section 8, subsection 2 of the Act or within the meaning of any other section of the Act, and denies that the agreement described in Paragraph 5 of the complaint is invalid, void and/or illegal.

5. Denies that Respondent, by its acts and each of them, as set forth in Paragraph 4 and 5 and 6 of the complaint, or by any other acts, did interfere with, restrain and/or coerce and/or is interfering with, restraining and/or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act or any other section of the Act, and denies that it did thereby engage in and/or is hereby engaging in unfair labor practices within the meaning of Section 8, subsection 1 of the Act, or any other section or subsection of said Act.

6. Denies that the aforesaid alleged acts of Respondents, as set forth and described in Paragraphs 4, 5 and 6 of the complaint, constitute unfair labor practices, affecting commerce within the meaning of Section 8, subsection 1 and/or 2 and Section 2, subsections 6 and 7, or any other section or subsection of the Act.

7. Answering Paragraph 9, Respondent denies that the aforesaid acts of Respondent, as set forth in Paragraphs 4, 5 and 6 of the complaint occurring in connection with the operations of the Respondent described in Paragraphs 1 and 2 of the complaint have a close, intimate and/or substantial relation to trade, traffic and/or commerce among the several states and tend to lead to labor disputes



burdening and obstructing commerce and the free flow of commerce.

Wherefore, Respondent prays that said complaint be dismissed.

VICTOR FORD COLLINS

Victor Ford Collins

Attorney for Respondent

State of California,

County of Los Angeles—ss.

Victor Semrau, being by me first duly sworn depose and says: That he is the Secretary of Kinner Motors, Inc., that he has read the foregoing Answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

VICTOR SEMRAU

VICTOR E. SEMRAU

(Victor Semrau)

Subscribed and sworn to before me this 30th day of November, 1943.

(Seal)

ELIZABETH L. KUHNS

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Feb. 14, 1946

## BOARD'S EXHIBIT NO. 2

Case No. 21-C-2307

Date 12-13-43

[Title of Board and Cause.]

## STIPULATION

It Is Hereby Stipulated and Agreed by and between Kinner Motors, Inc., by its undersigned representative, and Daniel J. Harrington, Attorney for the National Labor Relations Board, as follows:

1. That Kinner Motors, Inc. is a California corporation having its principal office and place of business at Glendale, California, where it owns and operates a plant for the manufacture of aircraft engine parts and the assembly of aircraft engines.

2. That Kinner Motors, Inc., in the course and conduct of its business during the period from January 1, 1943 to November 3, 1943, purchased raw materials amounting to approximately \$6,-162,648 in value, approximately \$2,930,169 thereof being transported to its Glendale plant from points outside the State of California.

3. That Kinner Motors, Inc., in the course and conduct of its business during the period from January 1, 1943, to November 3, 1943, sold products amounting to \$3,054,314 in value, of which amount sales approximating \$458,157 were made for delivery outside the State of California.

4. That Kinner Motors, Inc. is engaged in interstate commerce within the meaning of the National



Labor Relations Act and the decisions of the United States Supreme Court thereunder.

KINNER MOTORS, INC.

(By) VICTOR FORD COLLINS

DANIEL J. HARRINGTON

Daniel J. Harrington, Attorney  
National Labor Relations Board.

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United States of America

Before the National Labor Relations Board

Case No. 21-C-2307

In the Matter of

KINNER MOTORS, INC.

and

INTERNATIONAL ASSOCIATION OF  
MACHINISTS, DISTRICT LODGE NO. 94  
for and on behalf of LODGE NO. 311, A.F.L.

### DECISION AND ORDER

On January 25, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report annexed hereto. Thereafter, the respondent and the Asso-

ciation filed exceptions to the Intermediate Report and a joint brief in support of the exceptions. Oral argument, in which the respondent and the Union participated, was held before the Board in Washington, D. C. on May 16, 1944.

The Board has considered the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions.<sup>1</sup>

Shortly after the respondent's employees had commenced to organize through the Union, the Association was formed by three leadmen<sup>2</sup> in response to an address on forming an inside union, delivered at the plant by Walker<sup>3</sup> with the knowledge and

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<sup>1</sup>The respondent has contended that the Board is barred from proceeding in this case by a limitation on the use of its funds contained in Labor-Federal Security Appropriations Act, 1944, 57 Stat. 494. This contention may no longer be urged because that Appropriations Act has expired.

<sup>2</sup>We agree with the Trial Examiner's finding that, regardless of the supervisory status of leadmen, their activities on behalf of the Association are imputable to the respondent because it is apparent from the record that they were acting with the support and approval of management.

<sup>3</sup>Walker regularly took the place of Foreman Johnson one night each week and was characterized by Johnson as "top man" in the department on those occasions. We find that the conduct of Walker in urging the employees to form an inside

consent of Foreman Johnson. Thereafter, numerous leadmen, Foreman Johnson, and other supervisory employees openly distributed membership cards and solicited signatures at the plant during working hours, urging the employees to join the Association. Among the early officers of the Association were Christine Jagoe and Rose Minor, both employed as confidential secretaries to Personnel Director Sullivan in the respondent's personnel office, where all hiring, transfers, promotions, and discharges were cleared.<sup>4</sup> Despite the

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organization is imputable to the respondent (1) because the speech was made with the knowledge and permission of Foreman Johnson and (2) because the employees could reasonably regard Walker as a spokesman for management.

<sup>4</sup>Jagoe interviewed applicants for employment; filled out the application forms; and was at times called up by Personnel Director Sullivan to give her opinion upon an applicant's suitability for a specific job. Upon being employed, the applicant was supplied by Jagoe with various pamphlets, work cards, and other literature incidental to his work. Minor was in charge of employee insurance and personnel records, to which Jagoe also had access. Both had limited authority to sign Personnel Director Sullivan's name to correspondence.

Because of the active participation in the affairs of the Association, particularly during the critical formative stage, of these two confidential employees who were in close touch with management, the employees could reasonably believe that the Association had the support and backing of management. We find that the respondent is responsible for the activities of Jagoe and Minor on behalf of the Association. *N.L.R.B. v. Southern Bell Telephone Company*, 319 U.S. 50; *International Association of Machinists v. N.L.R.B.*, 311 U.S. 72.

adoption of by-laws which made these two employees ineligible for membership, Minor continued as secretary-treasurer of the Association and attended one of the bargaining conferences as an Association representative. Stevens also continued as president of the Association long after his promotion to a supervisory position in charge of the receiving department.

Within 2 months of the Association's first general meeting, the respondent granted it an exclusive recognition contract which, among other things, required the respondent to print and distribute copies of the contract to all employees. The respondent, however, went much further. At the request of the Association's president, the respondent bound within the covers of each contract detachable membership application and dues check-off authorization cards. The contracts with these inclusions were then distributed by the respondent to all employees, both members and non-members of the Association. When each new employee received from Jagoe in the personnel director's office material incidental to his employment, such as literature pertaining to a group insurance plan, he was also given a copy of the Association contract containing the membership application and check-off authorization cards. While Jagoe informed the new employee that participation in the group insurance plan was purely voluntary, no such assurance was given with respect to the Association. According to the Association's president, signed membership cards continued to be returned to the Associa-

tion, presumably originating from the contract enclosures.<sup>5</sup> In view of all the circumstances, we find that the distribution of the contracts containing the above-stated enclosures constituted powerful support to the Association and assisted in obtaining new members and thereby maintaining its claimed majority.

Shortly after the execution of the contract, the Association posted on the bulletin boards of both plants a notice in which it took credit for having negotiated in its contract a bonus for night workers. Although the contract contained no such provision, the respondent took no steps to repudiate the false claim of the Association. However, when, shortly thereafter, rumor credited an affiliated union with having obtained higher wages for the respondent's plant guards, the respondent quickly posted a notice, "correcting misstatements that are being made in the plant with reference to present wage raises" and informing the employees that "no Union or other organization was responsible for these raises."<sup>6</sup> This disparate treatment of the two

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<sup>5</sup> In this connection, it is significant to note that 156 new employees were hired during the month of October 1943 alone.

<sup>6</sup> The wage increases for the plant guards were approved by the Regional War Labor Board on July 5, 1943, subsequent to the effective date of the banus for night shift employees. Robert Stevens, Association president, testified without contradiction that the respondent's notice was directed to a rumor or claim that Building Service Employees International Union, AFL, had secured higher wages for the respondent's plant guards.



organizations enhanced the prestige and efficacy of the Association as a bargaining representative in the eyes of the employees and thereby assisted it in maintaining and increasing its membership.

The respondent rendered further support to the Association by permitting the employees on the night shift to elect a steward on the plant premises during working hours and in the presence of Foreman Johnson; by permitting leadman Cadaret to leave his work, without pay deductions, to attend Association meetings; and by Personnel Director Sullivan's advice to the night shift employees, assembled at the plant during working hours, that it would be best for them to join the Association. Further evidence of the Association's subservience to the respondent is the fact that the Association's president, Stevens, felt it necessary to obtain Chief Inspector Williams' permission to have his subordinate, Colburn, serve as secretary-treasurer of the Association. That the Association did not function as an effective collective bargaining agency is apparent from Personnel Director Sullivan's addresses to the employees in November 1943, at which time he in effect disposed of grievances unilaterally.

Like the Trial Examiner, we find that the respondent has dominated and interfered with the formation and administration of the Association and has contributed financial and other support to it, in violation of Section 8 (1) and (2) of the Act.

## ORDER

Upon the foregoing findings of fact and the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Kinner Motors, Inc., Glendale, California, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of, or contributing support to, Kinner Motors Employees Association, Inc., and dominating or interfering with the formation or administration of, or contributing support to, any other labor organization of its employees;

(b) Giving effect to its contract of June 16, 1943, with Kinner Motors Employees Association, Inc., or to any revision, renewal, extension, modification, or supplement thereof or to any superseding contract which may now be in effect;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Association of Machinists, Lodge No. 311, affiliated with the American Federation of Labor, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Withdraw all recognition from Kinner Motors Employees Association, Inc., as the representative of any of its employees for the purposes of collective bargaining with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Kinner Motors Employees Association, Inc., as such representatives;

(b) Post immediately in conspicuous places throughout its plant in Glendale, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; and (2) that it will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.



Signed at Washington, D. C., this 22 day of July  
1944.

HARRY A. MILLIS

Chairman

GERARD D. REILLY

Member

JOHN M. HOUSTON

Member

[Seal]

NATIONAL LABOR RELA-  
TIONS BOARD

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[Title of Board and Cause.]

Case No. 21-C-2307

MR. DANIEL J. HARRINGTON,

for the Board.

MR. VICTOR FORD COLLINS and

MR. JAMES S. WOLLACOTT,

both of Los Angeles, Calif., for the respondent.

MESSRS. PEARSON & PROCTOR, by

MR. MARLAN PROCTOR,

of Burbank, Calif., for the Association.

MR. ROSCOE ICKES,

of Los Angeles, Calif., for the Union.

## INTERMEDIATE REPORT

## STATEMENT OF THE CASE

Upon a charge duly filed on May 15, 1943, by  
International Association of Machinists, District  
Lodge No. 94, for and on behalf of Lodge No. 311,  
affiliated with the American Federation of Labor,

herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaint on November 26, 1943, against Kinner Motors, Inc., Glendale, California, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and the charge, with notice of hearing thereon, were duly served upon the respondent, the Union, and upon Kinner Motors Employees Association, Inc., the labor organization alleged in the complaint to be company-dominated, and herein called the Association.

With respect to the unfair labor practices, the complaint alleged, in substance, that from about February 1942, to the date of the issuance of the complaint herein, the respondent has expressed to the employees its opposition to any labor organization except an employer-dominated organization; that on or about March 15, 1943, the respondent inaugurated, sponsored, promoted, and formed the Association among its employees and at all times since that date has: (1) dominated, and interfered with the administration of the Association; (2) contributed financial and other support to it; (3) solicited and advised its employees to join it; and (4) attempted by means of threats to persuade its employees to become members thereof; and that on

or about June 16, 1943, the respondent entered into a written collective bargaining agreement with the Association as the exclusive representative of the employees which agreement was in full force and effect at the time of the issuance of the complaint herein.

On or about December 6, 1943, the respondent filed an answer admitting all the allegations of the complaint pertaining to the existence of the respondent and the nature, character, and extent of the business transacted by it, as well as the allegations that the Union and the Association are labor organizations within the meaning of the Act and that it did, on or about June 16, 1943, enter into a written collective bargaining agreement with the Association as the exclusive representative of its employees. The answer denied, however, all the allegations of the complaint with reference to the engagement by the respondent in any unfair labor practices.

Pursuant to notice, a hearing was held on December 13, 15, 16 and 17, 1943, at Los Angeles, California, before Howard Myers, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. At the opening of the hearing, the Association moved to intervene. The motion was granted without objection. Thereafter the Association filed an answer denying, among others, the allegations of the complaint that the respondent inaugurated, sponsored, promoted, and formed the Association; dominated and interfered with its administration; or gave it financial or other support. The Board,

the respondent, and the Association were represented by counsel. The Union appeared by one of its official representatives. All parties participated in the hearing where full opportunity was afforded them to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues. At the commencement of the hearing, counsel for the respondent moved, in which motion counsel for the Association joined, to dismiss the proceeding on the ground the proceeding was barred by the rider attached to the Federal Security Appropriation Act of 1944, Chapter 221, Public Law 135, 78th Congress.<sup>1</sup> The motion was denied. This motion was again renewed, and each time joined in by counsel for the Association, at the conclusion of the Board's case and at the end of the hearing. The motions were again denied. At the conclusion of the taking of all testimony, the motion of Board's counsel to conform the pleadings to the proof was granted over the objections of the respondent's counsel and the Association's counsel. The motion was made applicable only as to the correction of dates, names, and other minor recitals. Motions by the respondent's counsel and by the Association's counsel to dismiss the entire proceeding for failure of proof were taken under consideration and are now denied. Oral argument, in which counsel for the Board, for the respondent, and for the Association participated, was heard at the con-

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<sup>1</sup>The rider is commonly referred to as the "rider to 1944 Appropriation Act."

clusion of the taking of the evidence and is a part of the record. The parties were granted leave to file briefs with the undersigned on or before December 22, 1943. A brief has been received from the respondent's counsel.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

### FINDINGS OF FACT

#### 1. The business of the respondent

Kinner Motors, Inc., a California corporation, owns and operates two plants at Glendale, California, where it is engaged in the manufacture of aircraft engine parts and the assembly of aircraft engines. From January 1, 1943, to November 3, 1943, the respondent purchased raw materials amounting to approximately \$6,162,648 in value. Of this total, materials valued at about \$2,930,169 were transported to its plant from points outside California. During the same period the respondent sold products amounting to \$3,054,314 in value, of which amount sales approximating \$458,157 in value were made for delivery outside California.

The respondent conceded that it is engaged in commerce within the meaning of the Act.

#### II. The organizations involved

International Association of Machinists Lodge No. 311 is a labor organization affiliated with the

American Federation of Labor and admits to membership employees of the respondent.<sup>2</sup>

Kinner Motors Employees Association, Inc., is an unaffiliated labor organization admitting to membership only employees of the respondent.

### III. The unfair labor practices

#### A. The respondent's interference with and domination of the formation of the Association

In the early part of March 1943, the Union started to organize the respondent's employees. Soon after the Union organizing campaign began, R. H. Walker, who had charge of the night shift once each week, obtained permission from Foreman B. C. Johnson to ask the "boys" about forming an inside organization.<sup>3</sup> During a lunch period Walker called together all of the employees on his shift and, in Johnson's presence,<sup>4</sup> told them, according

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<sup>2</sup>The instant proceeding was instituted by Lodge 94 for and on behalf of Lodge 311.

<sup>3</sup>At the hearing, Foreman Johnson denied that Walker acted in his stead during the one night each week when he was off duty. When confronted with an affidavit previously signed by himself, however, he finally admitted that, although without the title of foreman, Walker was "top man" during his absence. Walker's testimony is uncontradicted that during the period in question Johnson was absent one day each week, and that on these occasions he was in charge.

<sup>4</sup>Johnson was not questioned about giving Walker permission. He admitted that the speech was made and that he was present, but stated that when Walker started "some sort of gabble" he went down to the end of the shop, began to operate a



to his own admission, that "the A.F. of L. was handbiling us at the gate," and "that we were going to have some sort of an organization pretty soon, and I thought it would be a good idea if we had one of our own."

Shortly after Walker's speech,<sup>5</sup> Leadman John Williams, father of Chief Inspector George Williams, consulted with Leadmen Orville Gilbert and Howard Sharrar concerning the organization of an inside union. John Williams conferred with Attorney Marlan Proctor. Acting upon Proctor's advice, John Williams, Gilbert, and Sharrar signed articles on March 22 incorporating the Association.

The three leadmen then had cards printed bearing the following text:

I, the undersigned, hereby designate and appoint Kinner Motors Employees' Association, Inc., as my exclusive bargaining agent under and by virtue of the terms of the National Labor Relations Act.

Williams distributed these cards among other leadmen who, in turn, solicited the signatures of employees throughout the plant during working

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noisy machine and did not hear what was said. Whether he heard Walker's speech or not is immaterial, since it is undisputed that after being informed of the nature of the speech he authorized its delivery.

<sup>5</sup> Walker testified that he delivered his speech 2 or 3 weeks before the Association was "heard of."

hours.<sup>6</sup> Foreman Johnson and W. J. Kroening, a supervisory employee<sup>7</sup> also distributed these cards and urged employees to join the Association.<sup>8</sup> Fore-

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<sup>6</sup>This finding is based upon the credible testimony of Leadmen Orrill and Gardiner.

<sup>7</sup>The confused state of the record does not permit a finding as to Kroening's exact classification. According to information read into evidence by Personnel Manager Sullivan, from purported company records, Kroening was hired in 1941 as a test mechanic, was reclassified to sub-foreman in July 1942, reclassified to test operator in January 1943, and reclassified to leadman in August 1943, Sullivan also testified, however, that classifications had been listed correctly in a document which he prepared in September 1943, and this document, in evidence, lists Kroening as a foreman. Kroening testified that while he had been hired as a test mechanic, he had always performed the same duties, and that in August 1943, when obtaining information for the Draft Board, he was told by Test Superintendent Gerber that he was a foreman. The evidence is clear that at the time of his activity on behalf of the Association Kroening had supervisory powers, whatever his title or classification. Personnel records show that from March until August 1943, he had charge of a test crew. Kroening stated that he had up to 10 men under his supervision, that he checked their work, instructed new employees, and that several employees whom he recommended for wage increases received them. The undersigned finds that his position and duties were such that employees reasonably considered his Association activities as having the approval and support of management.

<sup>8</sup>Kroening admitted engaging in this conduct. Johnson denied having either passed out cards or advising employees to join. The undersigned does not accept his denial as true. The finding rests



man Earl H. Friar told employees during smoking periods at the plant that he favored the association, and paid initiation fees into the organization.<sup>9</sup>

The first general meeting of the Association was held April 16, at a public hall, At the request of John Williams and Sharrar, Receiving Clerk R. L. Stevens acted as temporary chairman. At the second meeting held on April 23, Stevens was elected president, and he continued in this office until about a month before the hearing. Although promoted on May 1, being placed in charge of the receiving department, with supervision over three other clerks and a mover, Stevens remained in office as head of the Association. Christine Jagoe, secretary to Personnel Manager Sullivan, acted as secretary at the first Association meeting. Thereafter Rose Minor became secretary of the organization. Miss Minor is also employed in the personnel office, in charge of employee insurance and personnel records.

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upon the credible testimony of employee J. M. Davis, who testified that Johnson distributed cards among the employees, saying, "Boys, we've got some thing here." Davis named two other employees who were present at the time. Neither was called as a witness by the respondent.

<sup>9</sup> At the hearing Friar denied that he was or is a foreman. He admitted, however, that he assists Chief Inspector Williams, assigns his jobs to and "looks after" 8 employees, assumes responsibilities for the department when Williams is away, and recommends pay increases for the men in the department. Furthermore, Friar is classified as a foreman on a list of employees prepared by Personnel Director Sullivan in September 1943, and verified by him at the hearing.

B. The respondent's domination of and interference with administration of the Association

On May 1, Proctor wrote to the respondent, asking that the Association be recognized as the exclusive collective bargaining agent of the employees, and accompanying the request with a number of signed cards, the text of which has been noted above. On May 7, President Herring of the respondent wrote to the Association, stating that the cards had been checked, that the respondent would grant the request for recognition, and that it "would be pleased" to discuss "any matters" with it.

On June 16, the respondent and the Association entered into a collective bargaining agreement for 1 year, by terms of which the respondent recognized the Association as the exclusive bargaining agent for all the employees except certain exclusions. The contract covered wages and working conditions. The respondent, at its own expense, thereafter had copies of the contract printed. Within its covers were bound detachable cards, one an application for membership in the Association, and the other authorizing the respondent to make certain deductions monthly and to pay the deductions to the Association. Copies of the contract were distributed to all employees, and thereafter were given to each new employee at the time of hiring, by the personnel office.

In July the respondent permitted the following notice to be placed on the plant bulletin boards:

### Notice to Night Shift Employees

Please be advised that commencing immediately a bonus for night shift employees of five cents an hour will be paid by Kinner Motor Company, Inc., in accordance with the terms of the contract recently executed by and between Kinner Motor Company, Inc., and Kinner Motors Employees Association, Inc.

Please be further advised that this bonus has been approved by the War Labor Board.

KINNER MOTORS EMPLOYEES ASSOCIATION, INC.

By ROBT. L. STEVENS,  
President

The contract contains no such provision as that referred to in the notice.

During the summer an election was conducted among the employees of the night shift, during working hours and with the knowledge of Foreman Johnson,<sup>10</sup> to select a steward to attend Association meetings. Leadman Cadaret was elected. He thereafter attended Association meetings, which were held during his working hours, without punching out his time cards. There is no evidence that any deduction was ever made for time thus lost from his work. Cadaret testified that he did not ask to be "excused" for such absences. Under the circumstances it is reasonable to infer, and the undersigned finds, that Cadaret was permitted by

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<sup>10</sup>This finding is based upon Johnson's admission at the hearing.

the respondent to leave his work, without pay deduction, to attend Association meetings.

In September President Stevens of the Association and employee Colburn consulted Chief Inspector Williams and obtained his permission to have Colburn serve as secretary-treasurer of the Association.

In November Sullivan assembled all employees during working hours, on both the day and the night shift, and delivered extemporaneous speeches. Among other things, he urged employees to submit their grievances through the Association and advised them to consult with either their "superiors" or with the Association "officials" in obtaining "official" answers or opinions relating to grievances. At the night shift meeting he also told employees that while he had no right to solicit their membership in the Association, it had been organized for them and he thought it best for them to join.<sup>11</sup>

### C. Conclusions

Upon the entire record, the undersigned is convinced and finds that the Association is the creature

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<sup>11</sup>The findings as to the additional remarks made by Sullivan at the night shift meeting rest upon the credible testimony of employee Davis. As to the other remarks, the findings are based upon a document in evidence which Sullivan described as being the transcription of notes made by his stenographer of his statement to the day shift. No stenographer was present at the night session. He denied having advised employees to join the Association. The undersigned does not accept his denial as true.

of the respondent and was brought into existence and utilized by the respondent to defeat and forestall the organizational efforts of the Union. The contention of the respondent that the Association was the spontaneous result of the organizational desires of its employees is not supported by the record. As noted above, just before the Association was formed, Foreman Johnson permitted his assistant, Walker, to address all employees on the night shift and urge the formation of an inside organization. The Association was thereafter formed. Solicitation of members occurred openly and during working hours. Association cards were distributed by Johnson and Kroening. Foreman Friar joined the organization and told employees that he favored the Association.<sup>12</sup> Nor did the respondent cease to interfere with and give support to the Association after its organization. As found above, Leadman Cadaret was permitted to leave his work on the night shift to attend Association meetings, without pay deduction, Chief Inspector Williams was consulted as to whether or not one of the employees under him could serve as an Association officer, and Sullivan plainly advised employees on

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<sup>12</sup> Although the record contains persuasive evidence that leadmen who formally organized and became officers of the Association possessed supervisory powers, the undersigned considers it unnecessary to determine that point here. Whatever their supervisory powers, it is clear that they were acting with the support and approval of management.



the night shift in November, that it would be best for them to join the Association.

The undersigned finds that by the foregoing acts the respondent has dominated and interfered with the formation and administration of the Association and has contributed financial and other support to it, thereby interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act.

#### IV. The effect of the unfair labor practices upon commerce

The activities of the respondent set forth in Section III above, occurring in connection with the respondent as described in Section I above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The remedy

Having found that the respondent has engaged in certain unfair labor practices, it will be recommended that the respondent cease and desist from such conduct and take certain affirmative action which the undersigned finds necessary to effectuate the policies of the Act.

Having found that the respondent dominated and interfered with the formation and administration of the Association and contributed support to it, the undersigned therefore will recommend, in order to effectuate the policies of the Act and to free the respondent's employees from such domination and



interference, and the effects thereof, that the respondent withdraw all recognition from the Association as representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment and completely to disestablish it as such representative.

It has also been found that the agreement of June 16, 1943, entered into by and between the respondent and the Association has been a means whereby the respondent has utilized an employer-dominated labor organization to frustrate self-organization and defeat genuine collective bargaining by its employees. Under these circumstances any continuation, renewal, or modification of this agreement would perpetuate the conditions which have deprived the employees of the rights guaranteed to them by the Act and would render ineffectual other portions of these remedial recommendations. It will therefore be recommended that the respondent cease giving effect to any agreement between it and the Association, or to any modification or extension thereof. Nothing in these recommendations, however, should be taken to require the respondent to vary those wage, hour, and other substantive features of its relations with the employees themselves, if any, which the respondent established in performance of the said agreement as extended, renewed, modified, supplemented or superseded.

Upon the basis of the foregoing findings of fact and upon the entire record in the case the undersigned makes the following:

### CONCLUSIONS OF LAW

1. International Association of Machinists, Lodge No. 311, affiliated with the American Federation of Labor, and Kinner Motors Employees Association, Inc., are labor organization within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Kinner Motors Employees Association, Inc., and contributing financial and other support to it, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

### RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, Kinner Motors, Inc., its officers, agents, representatives, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the admin-

istration of Kinner Motors Employees Association, Inc., or with the formation or administration of any other labor organization of its employees, or from contributing financial or other support to Kinner Motors Employees Association, Inc., or to any other labor organization of its employees;

(b) Recognizing Kinner Motors Employees Association, Inc., as the exclusive representative of its employees for the purposes of collective bargaining;

(c) Giving effect to its contract of June 16, 1943, with Kinner Motors Employees Association, Inc., or any revision, renewal, extension, modification, or supplement thereof, or to any superceding contract which may now be in effect;

(d) In any other manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Withdraw all recognition from Kinner Motors Employees Association, Inc., as the representative of any of its employees for the purposes of collective bargaining with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Kinner Motors Employees Association, Inc., as such representative;

(b) Post immediately in conspicuous places throughout the respondent's Glendale plants, and maintain for a period of sixty (60) consecutive days from this date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a), (b), (c) and (d) of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

(c) Notify the Regional Director for the Twenty-first Region, in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply therewith;

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notify said Regional Director in writing that it has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such excep-

tions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing within ten (10) days from the date of the order transferring the case to the Board.

HOWARD MYERS

Trial Examiner

Dated: January 25, 1944.

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[Title of Board and Cause.]

Case No. 21-C-2307

### AFFIDAVIT AS TO SERVICE

District of Columbia—ss.

I, Georgie Coates, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 22nd day of July, 1944, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order (and Intermediate Report) to



the following named persons, addressed to them at the following addresses:

International Association of Machinists, District Lodge No. 94. Att: Mr. Roscoe Ickes, 123 W. 18th St., Los Angeles, Calif. (69193\*)

International Association of Machinists. Att: Mr. Carl Huhndorf, 711 Machinists' Bldg., Washington, D. C. (69194\*)

Kinner Motors, Inc., Glendale, Calif. (69195\*)

Mr. Victor Ford Collins, 1111 Board of Trade Building, Los Angeles, Calif. (69196\*)

Mr. James S. Woollacott, 215 W. 7th St., Los Angeles, Calif. (69197\*)

Kinner Motors Employees Association, Inc., Att: Pearson & Proctor, 218 Security Bank Bldg., Burbank, Calif. (69198\*)

GEORGIE COATES

Subscribed and sworn to before me this 22nd day of July, 1944.

VINCENT THOMPSON

Designated Agent for the  
N.L.R.B.

\* Numbers stamped on face Return Receipts.

[Printer's Note]: Six Return Receipts attached.



[Title of Board and Cause.]

Case No. 21-C-2307

STATEMENT OF EXCEPTIONS TO THE  
PROCEEDINGS ON THE HEARING AND  
TO THE INTERMEDIATE REPORT

Come now Kinner Motors, Inc., respondent in the above entitled matter and Kinner Motors Employees' Association, Inc., intervener in the above entitled matter, and submit herewith their statements setting forth exceptions to the hearing and proceedings therein, and to the Intermediate Report of the Trial Examiner dated January 25, 1944, which was transferred to the Board under date of January 28, 1944.

Exceptions to proceedings at the hearing.

Exception No. 1

Reporter's Transcript—Page 11 to 22:

“Mr. Collins: We object, if the Examiner please, to the introduction of these exhibits upon the ground that under Act 1944, Chapter 221, Public Law 135, 78th Congress, First Session, that on the face of them they show there is no jurisdiction for the proceeding, which would be the basis of the motion.

Trial Examiner Myers: What are your grounds? You say there is no basis.

Mr. Collins: On the ground that the proceeding has not been brought within three months, within the period of three months of the agreement concerning which the complaint is filed.

Trial Examiner Myers: You mean this written agreement between the Kinner Motors, Inc. and Kinner Motors Employees Association, Inc.?

Mr. Collins: That is right. That will be the basis of the motion that I intend to make, and I want to preserve——

Trial Examiner Myers: Why don't you go ahead with your motion now? I think this is an appropriate time to make it.

Mr. Collins: Thank you. If the Examiner please, on behalf of the Kinner Motors, Inc., we ask for dismissal of this entire proceeding, and we object to the continuance of the proceeding upon the grounds that under the Federal Security Appropriation Act 1944, Chapter 221, Public Law 135, 78th Congress, the proceeding was not initiated in time so there could be jurisdiction.

In Paragraph 5 it admits and in fact alleges, in the complaint, itself, that the agreement referred to between Kinner Motors, Inc. and the Kinner Motors Employees Association, Inc. was entered into on or about June 16, 1943; entered into a written agreement with the association. It is further alleged by its terms that it has remained in full force and effect from on or about June 16, 1943, to and including the date of this complaint. The Examiner, I know, is very familiar with the language of the Act, to which I refer, which provides——

Trial Examiner Myers: You mean the rider to the Appropriations Bill?

Mr. Collins: That is right, which provides that "No part of the funds appropriated in this title

shall be used in any way in connection with a complaint case arising over an agreement between management and labor, which has been in existence for three months or longer without the complaint being filed.”.

Trial Examiner Myers: Does it say “complaint?”

Mr. Collins: Yes, it says “complaint.” It does not say “charges”; very definitely it does not.

I want to call the Examiner’s attention, further, to the fact that the alleged charge could not apply in this particular case because it was filed prior to the execution of the agreement. There is no charge even filed by the A. F. of L., the charge was filed in May, prior to the execution of the agreement and could not apply. So there is no charge here even filed with the Government.

Particularly the language of the statute is very clear; it says “Complaint.” In all the authorities of all the jurisdictions they refer to the complaint as that which is issued by the Board; not the charge. There is quite a distinction.

Trial Examiner Myers: I understand that.

Mr. Collins: In this case we not only have that provision to rely on, we have the further contention that the charge by the union was not directed at all to the agreement which is involved. It was filed prior to that time. We do not have, even before this Examiner, a charge to the Board, as against the contract which is involved.

I feel, under those circumstances, that we will

be taking the time of a great many men here, and not only of counsel, but particularly this plant is in crucial war industry, and every man that is taken away to appear here to a proceeding where there is no jurisdiction will be taken away from the building of engines for war planes.

Trial Examiner Myers: You shouldn't have witnesses here that are not absolutely necessary. If you have any witnesses we will wait for the witnesses or we will go over to wherever the plant is and conduct a hearing near the plant.

What about this rider, Mr. Harrington?

Mr. Harrington: Well, the charges was filed before the complaint was entered into. Therefore, it was certainly within the three months period.

Trial Examiner Myers: You mean before the contract was entered into?

Mr. Harrington: Before the contract was entered into.

As to the word "complaint" the Comptroller General has ruled that complaint means charge. Here we had a charge that the company had dominated, originated and dominated the union. That charge was issued in May. So certainly this thing comes within the three months period.

Trial Examiner Myers: Do you have a copy of the Attorney General's opinion?

Mr. Harrington: No, I don't have. You mean the Comptroller General's ruling?

Trial Examiner Myers: Yes.

Mr. Harrington: No.

Mr. Collins: Might I point this out to the Examiner: The charge could not possibly be directed to the contract that had not been entered into. In other words, the domination could have entirely ceased. I think that we can indulge here in the presumption that there was no interference. I think any presumption is not orderly and usual procedure of business, so that the charge that was filed has absolutely nothing to do with the question of the contract. There is not even any charge that the contract arose out of any domination. There is not even any charge that the domination had not entirely ceased prior to the execution of the agreement.

So that we are here without any charges as to the validity or the effect of the domination as to the agreement which is complained of. And I can't believe that until I see that Comptroller General's opinion. I can't believe that under any law as applicable to this there might be something that has nothing to do with this, but when the statutes specifically refer to a complaint by the Board——

Trial Examiner Myers: Have you a copy of the Comptroller General's opinion in your office?

Mr. Proctor: For the purpose of the record I would like to make that motion my motion, as well.

Trial Examiner Myers: You mean you join with Mr. Collins in his motion; is that correct?

Mr. Proctor: That is right.

Trial Examiner Myers: We will take a thirty minute recess at at this time.

(Recess taken.)



Trial Examiner Myers: Are you ready, gentlemen?

Mr. Proctor: We are ready.

Mr. Harrington: The Board is ready.

Mr. Collins: If the Examiner please, there is certain language in the letter of the Comptroller General to the National Labor Relations Board that refers to the charge. I would say as far as he is concerned it apparently refers it back to the charge. Wouldn't you think so, Mr. Woollacott?

Mr. Woollacott: Yes.

Mr. Collins: However, the only two or three decisions which we have, of any court, upon the subject, and, after all, it would be the court's interpretation and not his, are based entirely upon the complaints which were filed prior to the amendment which we are relying on.

I don't see how any person could possibly read the language or how any court could read the language that we have in the law and construe it as being anything other than the complaint, which has a very designated meaning in this sort of procedure. And in all of the other references connected with the National Labor Relations Board, to the charge, it refers to the complaint issued by the Board. So the decisions we have now, none of them are in any way in point. They have to do with complaint and proceedings that were instituted prior to the enactment of this amendment we referred to. This brief was in one of these cases, and that case itself had to do with the complaint which was instituted, filed by the National Labor Rela-



tions Board itself prior to the enactment of the Amendment we are relying upon.

I want to call your attention further, however, in this particular case that no charge was filed within the three months period at all, by anything, even a charge as to the contract which is involved. Now, to ignore that would be simply to say that this Act, which we rely upon, absolutely has no meaning; because it is very specific and even if you read the complaint as charged, where we have a contract, as we have here, it must apply to a charge that is involved and is addressed against the contract, because it says this:

‘No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement between management and labor, which has been in existence for three months or longer without the complaint being filed;’

I don't see how you could possibly have jurisdiction in this particular case. Nothing has been shown or indicated to me that changes my thought or opinion on the subject. I earnestly urge this be dismissed. Certainly, I urge that we not be put to the cost and expense of this proceeding, and particularly to the loss of production. You can see that by the number of men that are retained here until we have a ruling upon this particular case.

Trial Examiner Myers: Does anybody want to be heard in support of the motion?

Mr. Proctor: In behalf of Kinner Motors Em-

ployees' Association, we adopt the statement of counsel for Kinner Motors, Inc., as our motion, and wish to incorporate it as a part of a motion I would make.

Trial Examiner Myers: Does anybody else want to say anything in support of the motion?

Do you want to add anything, Mr. Harrington?

Mr. Harrington: All I would like to add, Mr. Examiner, is that the Comptroller General's ruling on it is very specific. The Comptroller General's ruling is binding on executive agencies and it is binding on this Board.

Under the Comptroller General's ruling this case clearly is a case in which a charge has been filed within the three months and, therefore, it does not come within the appropriation order.

I might state the rider has been passed on by three Circuit Court of Appeals.

It has been passed on by the Fourth Circuit in the Baltimore Transit Company case; it has been passed on by the Second Circuit in the Elvine Knitting Mills case, and it has been passed on by the Ninth Circuit in the Cowell-Portland Cement Company case.

In all those cases the Court ruled in accordance with the Board's contention as to the meaning of the Board's rider, and in accordance with the Comptroller General's ruling.

Mr. Collins: Isn't it a fact that all those complaints and proceedings had been instituted prior to the passage of this Amendment?

Mr. Harrington: That is true in the Baltimore case. I don't know whether it is true in any of the other cases.

Mr. Collins: Isn't it a fact that in none of those cases was there a charge in relation to the contract, after the contract. For instance, in the one you are just referring to, the Elvine Knitting Mills case, it held, ". . . no bar to Board's order based upon findings that employer engaged in unfair labor practices in violation of Section 8 (1) and 8 (2) of National Labor Relations Act where Board petition for enforcement was filed before passage of the appropriation statute. . ."

Those, you see, Mr. Examiner, do not apply to this particular situation that we have here.

We have a case here, and that is true of all of these, and even your own Reporter in analyzing—

Mr. Harrington: I might remark that is not our Reporter.

Mr. Collins: Whatever Reporter this is.

Trial Examiner Myers: David Lawrence.

Mr. Harrington: Labor Relations Reporter.

Mr. Collins: It does not apply to the complaint stage. And all of those cases that have been decided have been, as far as I can find any language at all in them, absolutely not applicable to this. They are in connection with complaints filed prior to the passing of the statute.

Trial Examiner Myers: Another point in those cases cited by Mr. Harrington, the charge was filed more than three months after the making of the

contract. In this case we have the making of the contract three months after the filing of the charge.

Mr. Harrington: Within three months of the filing of the charge. The charge was filed in May, the contract was entered into in June.

Mr. Collins: The charge was filed before the making of the contract. The statute requires after the making of the contract. You can't file an anticipatory action that isn't in any statute.

Mr. Harrington: The charge is directed towards domination and support of the Kinner Motors Employees Association, and that is what the charge is specifically directed to.

Now, the entering into a contract would be just another instance of domination and support. I might also add that when this contract was entered into both the Company and the Association were under notice that the charge had been issued in respect to the Association. They entered into this contract with notice that the Board was proceeding in the matter.

Trial Examiner Myers: Does anybody else want to say anything either for or against the motion?

Mr. Collins: I have nothing further to say, except to repeat my request that this point be decided by formal order of the National Labor Relations Board before we be put to the expense of a trial.

Trial Examiner Myers: I will deny the motion to dismiss; that is, the motion to dismiss on the grounds that the rider to the Appropriation Bill is a bar to this proceeding.

If you want to take the matter up with the Board

you may do so, either by phone or telegram. I won't suspend the hearing for the purpose of getting a decision, because we don't know when the Board will have an opportunity to pass upon your application.

Mr. Collins: Then may the record show an exception and also any proceedings from here on are subject to our exception?

Trial Examiner Myers: Yes, sir. Are there any other objections?

Mr. Proctor: May that exception be taken on behalf of Kinner Motors Employees' Association?

Trial Examiner Myers: I might say, reiterate that the parties have an automatic exception to all my rulings, that is, they have exception to all the adverse rulings.

Mr. Collins: Then there is no necessity for us to enter an exception on the record.

Trial Examiner Myers: That is right. As I understand it, we will proceed with this hearing over your objection; is that right?

Mr. Collins: Right.

Mr. Proctor: Right.

## Exception No. 2

### Reporter's Trans. Page 23

Mr. Collins: We would like to add the further objection to the introduction of the complaint, and the charge, that the complaint does not conform to the charge. In other words, the complaint is based upon the contract. This ties into the motion which we made. We want to preserve it all the way along.

We object to the introduction on that ground, that the complaint refers to the contract, charges against the contract.

Trial Examiner Myers: Very well, sir. I will overrule that objection.

### Exception No. 43

Reporter's transcript—Page 559 and 560

“Mr. Collins: Yes, I would like to add to that——

Trial Examiner Myers: The motion to dismiss on the ground the rider is a bar to these proceedings is denied.

Mr. Collins: I wish, if the Court please, to move to dismiss upon the ground that the complaint itself, in this action, alleges and was also stipulated by all parties that the Kinner Motors Employees Association, Inc. is a duly organized labor organization under subdivision 5 of Section 2 of the Act.

Trial Examiner Myers: The motion is denied.”

### Exception No. 43-A

Reporter's trans.—Pages 586 to 588, incl.

“I can't close, if the Examiner please, without still harping on my theory of the law in this case in connection with the lack of jurisdiction.

I have read that law again and it seems to me so clear that there just couldn't be any question in it, in this particular case. For two reasons: First of all, no complaint was filed and I don't believe that any Federal Court, when this matter is passed upon by a Federal Court, will hold that a charge filed



with the Board is tantamount and equal to a complaint that is issued by the Board.

Now, we have a rule of interpretation of statutes that you can't read into it something—particularly a Penal statute—you can't read into the statute something that isn't there by import or by some character of language. There isn't a word in this about a charge. It uses the language "complaint."

We must presume, when our Congress passed that, certainly it chose and used the language that it desired to use. We are not bound by the Comptroller General's attempt to use his own argument as to why they should have used another word; why they should have said, "charge." All we have to consider is that they didn't use "charge" and used the word "complaint," so that even there legally I can't possibly see how there is any jurisdiction in this particular case. But the charge was not filed to the particular contract that is a bona fide bargaining agreement between these people. It was filed long prior to the execution of the contract, and no charge was filed, although they had a right to do it. No charge was filed by the A. F. of L. against the contract itself. I think that, in itself, is determinative of this matter.

Again I want to call your attention to the point which I made by way of a motion, which you said, and I can't find the authorities—I haven't been able to find them—your Honor spoke of the other day; there were authorities. But it seems to me if in the complaint they allege that this is a **valid union**, and then they stipulate it is a union within the

purview of sub-section 5 of Section 2, I can't possibly see how once they have stipulated to it, before this Examiner, how they can then turn around and say it is not valid, but is an invalid Association.

Trial Examiner Myers: They didn't stipulate it was a valid Association.

Mr. Collins: He certainly did.

Trial Examiner Myers: He said it was a labor organization within the meaning of the Act.

Mr. Collins: No, he didn't use the word "valid." The Examiner is right. If it is an association, then it must necessarily be valid or it isn't anything. If it isn't an association, it is invalid. By the same token, if it is an association it cannot be invalid.

Mr. Wollacott calls my attention to this, too: He said it was within the meaning of the Act; to add emphasis to the contention we are making."

This motion was reserved by the Trial Examiner, who in his Intermediate Report on Page 2, Lines 31 to 38, states as follows:

"At the commencement of the hearing, counsel for the respondent moved, in which motion counsel for the Association joined, to dismiss the proceeding on the ground the proceeding was barred by the rider attached to the Federal Security Appropriation Act of 1944, Chapter 221, Public Law 135, 78th Congress. The motion was denied. This motion was again renewed, and each time joined in by counsel for the Association, at the conclusion of the Board's case and at the end of the hearing. The motions were again denied."

The following exceptions are made to the Intermediate Report.

Exception No. 44

The evidence is insufficient to sustain the finding on Page 3, Line 26, which reads as follows:

“Soon after the union organizing campaign began, R. W. Walker, who had charge of the night shift once each week, obtained permission from Foreman B. C. Johnson to ask the “boys” about forming an inside organization.”

Exception No. 45

The evidence is insufficient to sustain the finding on Page 3, Line 29, which reads as follows:

“During a lunch period Walker called together all of the employees on his shift and, in Johnson’s presence, told them, according to his own admission, that “the A. F. of L. was hand-billing us at the gate,” and “that we were going to have some sort of an organization pretty soon, and I thought it would be a good idea if we had one of our own.”

Exception No. 46

The evidence is insufficient to sustain the findings on Page 3, Lines 35, 36, and 37, that John Williams, Orville Gilbert, and Howard Sharrar were leadmen.

Exception No. 47

The evidence is insufficient to sustain the finding on Page 3, Line 61, which reads as follows:

“Whether he heard Walker’s speech or not is immaterial, since it is undisputed that after being

informed of the nature of the speech he authorized its delivery.”

Exception No. 48

The evidence is insufficient to sustain the finding on Page 4, Line 1, etc., which reads as follows:

“Williams distributed these cards among other leadmen who, in turn, solicited the signatures of employees throughout the plant during working hours. Foreman Johnson and W. J. Kroening, a supervisory employee, also distributed these cards and urged employees to join the Association. Foreman Earl H. Friar told employees during smoking periods at the plant that he favored the association, and paid initiation fees into the organization.”

Exception No. 49

The evidence is insufficient to sustain the finding on Page 4, commencing on Line 13, which reads as follows:

“Although promoted on May 1, being placed in charge of the receiving department, with supervision over three other clerks and a mover, Stevens remained in office as head of the Association.”

Exception No. 50

The evidence is insufficient to sustain the finding on Page 4, commencing at Line 34, which reads as follows:

“The evidence is clear that at the time of his activity on behalf of the Association Kroening had supervisory powers, whatever his title or classification.”

Exception No. 51

The evidence is insufficient to sustain the finding on Page 4, Line 38, which reads as follows:

“Kroening stated that he had up to 10 men under his supervision, that he checked their work, instructed new employees, and that several employees whom he recommended for wage increases received them. The undersigned finds that his position and duties were such that employees reasonably considered his Association activities as having the approval and support of management.”

Exception No. 52

The evidence is insufficient to sustain the finding on Page 4, Line 45, which reads as follows:

“Johnson denied having either passed out cards or advising employees to join. The undersigned does not accept his denial as true.”

Exception No. 53

The evidence is insufficient to sustain the finding on Page 5, Line 45, which reads as follows:

“During the summer an election was conducted among the employees of the night shift, during working hours and with the knowledge of Foreman Johnson, to select a steward to attend Association meetings. Leadman Cadaret was elected. He thereafter attended Association meetings, which were held during his working hours, without punching out his time cards. There is no evidence that any deduction was ever made for time thus lost from his work. Cadaret testified that he did not ask to be



“excused” for such absences. Under the circumstances it is reasonable to infer, and the undersigned finds, that Cadaret was permitted by the respondent to leave his work, without pay deduction, to attend Association meetings.”

Exception No. 54

The evidence is insufficient to sustain the finding on Page 5, Line 55, which reads as follows:

“In September President Stevens of the Association and employee Colburn consulted Chief Inspector Williams and obtained his permission to have Colburn serve as secretary-treasurer of the Association.”

Exception No. 55

The evidence is insufficient to sustain the finding on Page 6, Line 6, which reads as follows:

“At the night shift meeting he also told employees that while he had no right to solicit their membership in the Association, it had been organized for them and he thought it best for them to join.”

Exception No. 56

The evidence is insufficient to sustain the conclusions on Page 6, Line 10 to Line 40, inclusive, which reads as follows:

“Upon the entire record, the undersigned is convinced and finds that the Association is the creature of the respondent and was brought into existence and utilized by the respondent to defeat and forestall the organization efforts of the Union. The contention of the respondent that the Associa-



tion was the spontaneous result of the organizational desires of its employees is not supported by the record. As noted above, just before the Association was formed, Foreman Johnson permitted his assistant, Walker, to address all employees on the night shift and urge the formation of an inside organization. The Association was thereafter formed. Solicitation of members occurred openly and during working hours. Association cards were distributed by Johnson and Kroening. Foreman Friar joined the organization and told employees that he favored the Association. Nor did the respondent cease to interfere with and give support to the Association after its organization. As found above, Leadman Cadaret was permitted to leave his work on the night shift to attend Association meetings, without pay deduction, Chief Inspector Williams was consulted as to whether or not one of the employees under him could serve as an Association Officer, and Sullivan plainly advised employees on the night shift in November, that it would be best for them to join the Association.

The undersigned finds that by the foregoing acts the respondent has dominated and interfered with the formation and administration of the Association and has contributed financial and other support to it, thereby interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act."

## Exception No. 57

The evidence is insufficient to sustain the finding on Page 6, Line 50 through Line 63, which reads as follows:

“The findings as to the additional remarks made by Sullivan at the night shift meeting rest upon the credible testimony of employee Davis. As to the other remarks, the findings are based upon a document in evidence which Sullivan described as being the transcription of notes made by his stenographer of his statement to the day shift. No stenographer was present at the night session. He denied having advised employees to join the Association. The undersigned does not accept his denial as true.

Although the record contains persuasive evidence that leadmen who formally organized and became officers of the Association possessed supervisory powers, the undersigned considers it unnecessary to determine that point here. Whatever their supervisory powers, it is clear that they were acting with the support and approval of management.”

## Exception No. 58

The evidence is insufficient to sustain the recommended remedies referred to in Paragraph 5, Page 7, Lines 5 to 41, inclusive.

## Exception No. 59

The evidence and findings are insufficient to justify conclusions of law, Paragraph 2, Page 7, Lines 50 to 54, inclusive, which reads as follows:

“By dominating and interfering with the formation and administration of Kinner Motors Employees Association, Inc., and contributing financial and other support to it, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.”

Exception No. 60

The evidence and findings of fact are insufficient to justify the conclusion of law in Paragraph 3, Page 7, Lines 55 through 59, which reads as follows:

“By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.”

Exception No. 61

The evidence and findings of fact are insufficient to justify the conclusion of law in Paragraph 4, Page 7, Lines 60 through 63, which reads as follows:

“The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.”

Exception 62

The evidence and findings of fact and conclusions of law are insufficient to justify the recommendations contained on Page 8, Line 1 to Line 62, inclusive.

## Exception No. 63

The undersigned except to the ruling of the Trial Examiner as contained in his Intermediate Report, Page 2, Line 42, as follows, to-wit:

“Motions by the respondent’s counsel and by the Association’s counsel to dismiss the entire proceeding for failure of proof were taken under consideration and are now denied.”

Respectfully submitted,

VICTOR FORD COLLINS and  
JAMES S. WOOLLACOTT

By VICTOR FORD COLLINS

Attorneys for Kinner Motors,  
Inc.

PEARSON & PROCTOR

By MARLAN PROCTOR

Attorneys for Kinner Motors  
Employees’ Assn. Inc.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

v.

KINNER MOTORS, INC.,  
Respondent.

CERTIFICATE OF THE NATIONAL LABOR  
RELATIONS BOARD

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 3, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled, “In the Matter of Kinner Motors, Inc. and International Association of Machinists, District Lodge No. 94 for and on behalf of Lodge No. 311, A.F.L.,” Case No. 21-C-2307 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of order designating Howard Myers Trial Examiner for National Labor Relations Board, dated December 13, 1943.

(2) Stenographic transcript of testimony held before Howard Myers, Trial Examiner for the National Labor Relations Board on December 13, 15, 16 and 17, 1943, together with all exhibits introduced into evidence.

(3) Copy of Trial Examiner's Intermediate Report, dated January 25, 1944 (attached to Item No. 12).

(4) Copy of order transferring case to the Board, dated January 28, 1944.

(5) Copy of respondent's and Association's letter, dated February 2, 1944, requesting extension of time to file exceptions and brief, and copy of telegram granting extension.

(6) Copy of respondent's request for oral argument before the Board, dated February 4, 1944.

(7) Copy of respondent's and Association's exceptions to the Intermediate Report.

(8) Copy of notice of hearing for purpose of oral arguments before the Board, dated April 10, 1944.

(9) Copy of respondent's telegram, dated April 13, 1944, requesting postponement of oral argument.

(10) Copy of notice of postponement of hearing for purpose of oral argument, dated April 15, 1944.

(11) Copy of list of appearances at oral argument held before the Board on May 16, 1944.

(12) Copy of decision and order issued by the National Labor Relations Board July 22, 1944, with annexed Intermediate Report, together with



affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 20th day of December 1944.

[Seal]

JOHN E. LAWYER

Chief, Order Section

NATIONAL LABOR RELATIONS BOARD

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[Title of Circuit Court of Appeals and Cause.]

PETITION FOR ENFORCEMENT OF AN  
ORDER OF THE NATIONAL LABOR  
RELATIONS BOARD

To the Honorable, the Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, Stat. 449, c. 372, 29 U.S.C. § 151, et seq.), respectfully petitions this Court for the enforcement of its order against respondent, Kinner Motors, Inc., Glendale, California, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Kinner Motors.

Inc. and International Association of Machinists, District Lodge No. 94 for and on behalf of Lodge No. 311, A.F.L., Case No. 21-C-2307.”

In support of this petition, the Board respectfully shows:

(1) Respondent is a California corporation, and is engaged in business in the State of California, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board as more fully shown by the entire record thereof, certified by the Board and filed with this Court herein, to which reference is hereby made, the Board, on July 22, 1944, duly issued an order directed to the respondent, and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

### ORDER

Upon the foregoing findings of fact and the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Kinner Motors, Inc., Glendale, California, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of, or contributing support to, Kinner Motors Employees Association, Inc., and domi-

nating or interfering with the formation or administration of, or contributing support to, any other labor organization of its employees;

(b) Giving effect to its contract of June 16, 1943, with Kinner Motors Employees Association, Inc., or to any revision, renewal, extension, modification, or supplement thereof or to any superseding contract which may now be in effect;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Association of Machinists, Lodge No. 311, affiliated with the American Federation of Labor, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Withdraw all recognition from Kinner Motors Employees Association, Inc., as the representative of any of its employees for the purposes of collective bargaining with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Kinner Motors Employees Association, Inc., as such representative:

(b) Post immediately in conspicuous places throughout its plant in Glendale, California, and

maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; and (2) that it will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(3) On July 22, 1944, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Victor Ford Collins, Esquire, and James S. Woollacott, Esquire, respondent's attorneys, Los Angeles, California.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleading, testimony and evidence, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the

transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board and requiring respondent, and its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD

MALCOLM F. HALLIDAY

Associate General Counsel

Dated at Washington, D. C., this 20th day of December, 1944.

District of Columbia—ss.

Malcolm F. Halliday, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

MALCOLM F. HALLIDAY

Associate General Counsel

Subscribed and sworn to before me this 20th day of December, 1944.

[Seal] JOHN E. LAWYER

Notary Public, District of Columbia. My Commission Expires August 14, 1949.

[Endorsed]: Filed Dec. 28, 1944. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCE-  
MENT OF AN ORDER OF NATIONAL  
LABOR RELATIONS BOARD

To the Honorable the Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit:

Comes now Kinner Motors, Inc., Respondent in the above-entitled matter, in answer to the petition for enforcement of an order of the National Labor Relations Board, and respectfully denies and alleges as follows:

I.

Admits all of the allegations of Paragraphs I, II, III, and IV of said petition.

II.

This respondent respectfully urges that said petition for enforcement be denied on the following grounds, to wit:

1. The Board had no jurisdiction by reason of the failure to file a complaint within three months after the execution of the labor agreement, as required by the Appropriation Rider, Act of 1944, Chapter 221, Public Law 135, 78th Congress.

2. The Board's Findings of Fact are not supported by any substantial evidence.

3. The facts so found are insufficient to sustain the Order that the Respondent has engaged, or is engaging in, unfair labor practices within the meaning of Section 8 (2) and (1) of the Act.

4. The Board's Order is invalid.



Wherefore, Respondent prays that said petition for enforcement be denied.

VICTOR FORD COLLINS

Attorney for Respondent

Kinner Motors, Inc.

State of California,

County of Los Angeles—ss.

Victor Ford Collins, being by me first duly sworn deposes and says: That he is the Attorney for the Respondent. Kinner Motors, Inc., in the above-entitled action; that he has read the foregoing Answer To Petition For Enforcement Of An Order Of National Labor Relations Board, and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

VICTOR FORD COLLINS

Subscribed and Sworn to before me this 4th day of January, 1945.

[Seal]

ELIAS MANSFIELD

Notary Public in and for the County of Los Angeles  
State of California

#### AFFIDAVIT OF SERVICE BY MAIL

State of California,

County of Los Angeles,—ss.

E. Olsen, being duly sworn says: That affiant is a citizen of the United States, over the age of 18 years, a resident of Los Angeles County and not a party to the within action.

That affiant's business address is 1111 Board of Trade Building, 111 West Seventh Street, Los Angeles 14, California.

That affiant served a copy of the attached Statement of Points Relied Upon By The Respondent, Kinner Motors, Inc., Designation of Those Portions of The Record To Be Printed, and Answer To Petition For Enforcement of An Order of National Labor Relations Board, by placing a copy of each in an envelope addressed to:

Malcolm F. Halliday, Esq.,  
Associate General Counsel,  
National Labor Relations Board,  
Washington 25, D. C.,

this being his business address, which envelope was then sealed and postage fully prepaid thereon, and thereafter on January 5, 1945 deposited in the United States Post Office at Los Angeles, California; that there is delivery service by United States mail at the place so addressed or regular communication by United States mail between the place of mailing and the place so addressed.

E. OLSEN

Subscribed and Sworn to before me this 5 day of January, 1945.

[Seal]

ELIAS MANSFIELD

Notary Public in and for the County of Los Angeles  
State of California.

[Endorsed]: Filed Jan. 8, 1945. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED UPON  
BY THE BOARD

Pursuant to Section 6 of Rule 19 of the Court, the Board submits the following statement of points upon which it intends to rely in the above entitled proceeding:

I.

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (2) and (1) of the Act.

II.

The Board's order is valid.

Dated at Washington, D. C., this 20th day of December 1944.

MALCOLM F. HALLIDAY

Associate General Counsel

National Labor Relations  
Board.

[Endorsed]: Filed Dec. 28, 1944. Paul P. O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED UPON BY  
THE RESPONDENT, KINNER MOTORS,  
INC.

Pursuant to Section 6 of Rule 19 of the Court,

the Respondent, Kinner Motors, Inc., submits the following Statement of Points upon which it intends to rely in the above-entitled proceeding:

I.

The Board had no jurisdiction by reason of the failure to file a complaint within three months after the execution of the agreement, as required by the appropriation rider, Act of 1944, Chapter 221, Public Law, 135, 78th Congress.

II.

The Board's Findings of Fact are not supported by any substantial evidence.

III.

The facts so found are insufficient to sustain the Order, that the Respondent has engaged, or is engaging in, unfair labor practices within the meaning of Section 8 (2) and (1) of the Act.

IV.

The Board's Order is invalid.

VICTOR FORD COLLINS

Attorney for Respondent,  
Kinner Motors, Inc.

AFFIDAVIT OF SERVICE BY MAIL

State of California,  
County of Los Angeles—ss.

E. Olsen, being duly sworn says: That affiant is a citizen of the United States, over the age of 18

years, a resident of Los Angeles County and not a party to the within action.

That affiant's business address is 1111 Board of Trade Building, 111 West Seventh Street, Los Angeles 14, California.

That affiant served a copy of the attached Statement of Points Relied Upon By The Respondent, Kinner Motors, Inc., Designation of Those Portions of The Record To Be Printed, and Answer To Petition For Enforcement of An Order of National Labor Relations Board, by placing a copy of each in an envelope addressed to:

Malcolm F. Halliday, Esq.,  
Associate General Counsel,  
National Labor Relations Board,  
Washington 25, D. C.,

this being his business address, which envelope was then sealed and postage fully prepaid thereon, and thereafter on January 5, 1945 deposited in the United States Post Office at Los Angeles, California; that there is delivery service by United States mail at the place so addressed or regular communication by United States mail between the place of mailing and the place so addressed.

E. OLSEN

Subscribed and Sworn to before me this 5 day of January, 1945.

[Seal] ELIAS MANSFIELD  
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Jan. 8, 1945. Paul P. O'Brien, Clerk.

## ORDER TO SHOW CAUSE

CCA No. 10956

United States of America,—ss.

The President of the United States of America:

To Kinner Motors, Inc., Glendale, California; International Association of Machinists, District Lodge No. 94, Att: Mr. Roscoe Ickes, 123 W. 18th St., Los Angeles, California, and Kinner Motors Employees Association, Inc., Att: Pearson & Proctor, 218 Security Bank Bldg., Burbank, California.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 28th day of December, 1944 a petition of the National Labor Relations Board for enforcement of its order entered on July 22, 1944 in a proceeding known upon the records of the said Board as "In the Matter of Kinner Motors, Inc., and International Association of Machinists, District Lodge No. 94 for and on behalf of Lodge No. 311, A.F.L., Case No. 21-C-2307." and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of



such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Harlan Fiske Stone, Chief Justice of the United States, this 28th day of December in the year of our Lord one thousand nine hundred and forty-four.

[Seal]                      PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

### RETURN ON SERVICE OF WRIT

United States of America,  
Southern District of California—ss.

I hereby certify and return that I served the annexed Order to show cause on the therein-named Mr. Roscoe Ickes as authorized agent for International Association of Machinists, District Lodge No. 94 by handing to and leaving a true and correct copy thereof with him personally at Los Angeles in said District on the 5th day of December, 1944.

ROBERT E. CLARK

U. S. Marshal.

By T. R. KEERE

Deputy.

Marshal's Fees .....	\$ 6.00
Mileage .....	
Expenses .....	1.75
<hr/>	
Total	\$ 7.75

#27296

## RETURN ON SERVICE OF WRIT

United States of America,  
So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to show cause on the therein-named Pearson & Proctor as representatives and authorized agents of Kinner Motors Employees Association, Inc. by handing to and leaving a true and correct copy thereof with Marlan A. Proctor Attorney at Law Co-Partners Pearson & Proctor personally at Burbank, in said District on the 3rd day of January, 1945.

ROBERT E. CLARK

U. S. Marshal.

By CHARLES W. ROSS

Deputy.

#27296

## RETURN ON SERVICE OF WRIT

United States of America,  
So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to show cause on the therein-named Kinner Motors Inc. by handing to and leaving a true and correct copy thereof with G. Edenguist Vice-President for Kinner Motors Inc. personally at Glendale in said District on the 2nd day of January, 1945.

ROBERT E. CLARK

U. S. Marshal.

By CHARLES W. ROSS

Deputy.

Before the National Labor Relations Board  
Twenty-First Region

Case No. 21-C-2307

In the Matter of

**KINNER MOTORS, INC.**

and

**INTERNATIONAL ASSOCIATION OF MACH-  
INISTS DISTRICT LODGE No. 94, for and  
on behalf of Lodge No. 311, AFL.**

Room 901, Board of Trade Building,  
111 West Seventh Street,  
Los Angeles, California.

Monday, December 13, 1943.

The above-entitled matter came on for hearing,  
pursuant to notice at 10:00 o'clock a.m.

Before: Howard Myers, Trial Examiner.

Appearances:

Daniel J. Harrington,  
Attorney for the National Labor Relations  
Board.

Victor Ford Collins,  
1111 Board of Trade Building, Los An-  
geles, California, appearing on behalf of  
Kinner Motors, Inc.

James S. Woollacott,

215 West 7th Street, Los Angeles, California, appearing on behalf of Kinner Motors, Inc. [1\*]

Roscoe Ickes,

123 West 18th Street, Los Angeles, California, appearing on behalf of International Association of Machinists District Lodge No. 94, for and on behalf of Lodge No. 311, AFL.

Pearson & Proctor, by Marlan Proctor,

218 Security Bank Building, Burbank, California, appearing on behalf of Kinner Motors Employees Association, Inc.

[2]

Mr. Collins: We object, if the Examiner please, to the introduction of these exhibits upon the ground that under Act 1944, Chapter 221, Public Law 135, 78th Congress, First Session, that on the face of them they show there is no jurisdiction for the proceeding, which would be the basis of the motion.

Trial Examiner Myers: What are your grounds? You say there is no basis.

Mr. Collins: On the ground that the proceeding has not been brought within three months, within the period of three months of the agreement concerning which the complaint is filed.

Trial Examiner Myers: You mean this written

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\*Page numbering appearing at top of page of original Reporter's Transcript.

agreement between the Kinner Motors, Inc. and Kinner Motors Employees Association, Inc.?

Mr. Collins: That is right. That will be the basis of the motion that I intend to make, and I want to preserve——

Trial Examiner Myers: Why don't you go ahead with your motion now? I think this is an appropriate time to make it. [11]

Mr. Collins: Thank you. If the Examiner please, on behalf of the Kinner Motors, Inc. we ask for dismissal of this entire proceeding, and we object to the continuance of the proceeding upon the grounds that under the Federal Security Appropriation Act 1944, Chapter 221, Public Law 135, 78th Congress, the proceeding was not initiated in time so there could be jurisdiction.

In Paragraph 5 it admits and in fact alleges, in the complaint, itself, that the agreement referred to between Kinner Motors, Inc. and the Kinner Motors Employees Association, Inc. was entered into on or about June 16, 1943; entered into a written agreement with the association. It is further alleged by its terms that it has remained in full force and effect from on or about June 16, 1943, to and including the date of this complaint. The Examiner, I know, is very familiar with the language of the Act, to which I refer, which provides—

Trial Examiner Myers: You mean the rider to the Appropriations Bill?

Mr. Collins: That is right, which provides that "No part of the funds appropriated in this title shall be used in any way in connection with a com-

plaint case arising over an agreement between management and labor, which has been in existence for three months or longer without the complaint being filed, \* \* \*” [12]

Trial Examiner Myers: Does it say “complaint?

Mr. Collins: Yes, it says “complaint.” It does not say ‘charges’; very definitely it does not.

I want to call the Examiner’s attention, further to the fact that the alleged charge could not apply in this particular case because it was filed prior to the execution of the agreement. There is no charge even filed by the A. F. of L., the charge was filed in May, prior to the execution of the agreement and could not apply. So there is no charge here even filed with the Government.

Particularly the language of the statute is very clear; it says “Complaint.” In all the authorities of all the jurisdictions they refer to the complaint as that which is issued by the Board; not the charge. There is quite a distinction.

Trial Examiner Myers: I understand that.

Mr. Collins: In this case we not only have that provision to rely on, we have the further contention that the charge by the union was not directed at all to the agreement which is involved. It was filed prior to that time. We do not have, even before this Examiner, a charge to the Board, as against the contract which is involved.

I feel, under those circumstances, that we will be taking the time of a great many men here, and not only of counsel, but particularly this plant is in



crucial war industry, and [13] every man that is taken away to appear here on a proceeding where there is no jurisdiction will be taken away from the building of engines for war planes.

Trial Examiner Myers: You shouldn't have witnesses here that are not absolutely necessary. If you have any witnesses we will wait for the witnesses or we will go over to wherever the plant is and conduct a hearing near the plant.

What about this rider, Mr. Harrington?

Mr. Harrington: Well, the charge was filed before the complaint was entered into. Therefore, it was certainly within the three months period.

Trial Examiner Myers: You mean before the contract was entered into?

Mr. Harrington: Before the contract was entered into.

As to the word "complaint" the Comptroller General has ruled that complaint means charge. Here we had a charge that the company had dominated, originated and dominated the union. That charge was issued in May. So certainly this thing comes within the three months period.

Trial Examiner Myers: Do you have a copy of the Attorney General's opinion?

Mr. Harrington: No, I don't have. You mean the Comptroller General's ruling?

Trial Examiner Myers: Yes.

Mr. Harrington: No. [14]

Mr. Collins: Might I point this out to the Examiner: The charge could not possibly be directed to the contract that had not been entered into. In

other words, the domination could have entirely ceased. I think that we can indulge here in the presumption that there was no interference. I think any presumption is not orderly and usual procedure of business, so that the charge that was filed has absolutely nothing to do with the question of the contract. There is not even any charge that the contract arose out of any domination. There is not even any charge that the domination had not entirely ceased prior to the execution of the agreement.

So that we are here without any charges as to the validity or the effect of the domination as to the agreement which is complained of. And I can't believe that until I see that Comptroller General's opinion. I can't believe that under any law as applicable to this there might be something that has nothing to do with this, but when the statutes specifically refer to a complaint by the Board——

Trial Examiner Myers: Have you a copy of the Comptroller General's opinion in your office?

Mr. Proctor: For the purpose of the record I would like to make that motion my motion, as well.

Trial Examiner Myers: You mean you join with Mr. Collins in his motion; is that correct?

Mr. Proctor: That is right. [15]

Trial Examiner Myers: We will take a thirty minute recess at this time.

(Recess taken.)

Trial Examiner Myers: Are you ready, gentlemen?

Mr. Proctor: We are ready.

Mr. Harrington: The Board is ready.

Mr. Collins: If the Examiner please, there is certain language in the letter of the Comptroller General to the National Labor Relations Board that refers to the charge. I would say as far as he is concerned it apparently refers it back to the charge. Wouldn't you think so, Mr. Woollacott?

Mr. Woollacott: Yes.

Mr. Collins: However, the only two or three decisions which we have, of any court, upon the subject, and, after all, it would be the court's interpretation and not his, are based entirely upon the complaints which were filed prior to the amendment which we are relying on.

I don't see how any person could possibly read the language or how any court could read the language that we have in the law and construe it as being anything other than the complaint, which has a very designated meaning in this sort of procedure. And in all of the other references connected with the National Labor Relations Board, to the charge, it refers to the complaint issued by the Board. So the decisions we have now, none of them are in any way in point. [16] They have to do with complaint and proceedings that were instituted prior to the enactment of this amendment we referred to. This brief was in one of these cases, and that case itself had to do with the complaint which was instituted, filed by the National Labor Relations Board itself prior to the enactment of the Amendment we are relying upon.

I want to call your attention further, however, in this particular case that no charge was filed within the three months period at all, by anything, even a charge as to the contract which is involved. Now, to ignore that would be simply to say that this Act, which we rely upon, absolutely has no meaning; because it is very specific and even if you read the complaint as charged, where we have a contract, as we have here, it must apply to a charge that is involved and is addressed against the contract, because it says this:

“No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement between management and labor, which has been in existence for three months or longer without the complaint being filed; \* \* \*”

I don't see how you could possibly have jurisdiction in this particular case. Nothing has been shown or indicated to me that changes my thought or opinion on the subject. I earnestly urge this be dismissed. Certainly, I urge that we not be put to the cost and expense of this proceeding, and [17] particularly to the loss of production. You can see that by the number of men that are retained here until we have a ruling upon this particular case.

Trial Examiner Myers: Does anybody want to be heard in support of the motion?

Mr. Proctor: In behalf of Kinner Motors Employees' Association we adopt the statement of counsel for Kinner Motors, Inc., as our motion, and

wish to incorporate it as a part of a motion I would make.

Trial Examiner Myers: Does anybody else want to say anything in support of the motion?

Do you want to add anything, Mr. Harrington?

Mr. Harrington: All I would like to add, Mr. Examiner, is that the Comptroller General's ruling on it is very specific. The Comptroller General's ruling is binding on executive agencies and it is binding on this Board.

Under the Comptroller General's ruling this case clearly is a case in which a charge has been filed within the three months and, therefore, it does not come within the appropriation order.

I might state the rider has been passed on by three Circuit Courts of Appeals.

It has been passed on by the Fourth Circuit in the Baltimore Transit Company case; it has been passed on by the Second Circuit in the Elvine Knitting Mills case, and it has [18] been passed on by the Ninth Circuit in the Cowell-Portland Cement Company case.

In all those cases the Court ruled in accordance with the Board's contention as to the meaning of the Board's rider, and in accordance with the comptroller General's ruling.

Mr. Collins: Isn't it a fact that all those complaints and proceedings had been instituted prior to the passage of this Amendment?

Mr. Harrington: That is true in the Baltimore case. I don't know whether it is true in any of the other cases.



Mr. Collins: Isn't it a fact that in none of those cases was there a charge in relation to the contract, after the contract. For instance, in the one you are just referring to, the Elvine Knitting Mills case, it held, " \* \* \* no bar to Board's order based upon findings that employer engaged in unfair labor practices in violation of Section 8 (1) and 8 (2) of National Labor Relations Act where Board's petition for enforcement was filed before passage of the appropriation statute \* \* \*"

Those, you see, Mr. Examiner, do not apply to this particular situation that we have here.

We have a case here, and that is true of all of these, and even your own Reporter in analyzing——

Mr. Harrington: I might remark that is not our Reporter.

Mr. Collins: Whatever Reporter this is. [19]

Trial Examiner Myers: David Lawrence.

Mr. Harrington: Labor Relations Reporter.

Mr. Collins: It does not apply to the complaint stage. And all of those cases that have been decided have been, as far as I can find any language at all in them, absolutely not applicable to this. They are in connection with complaints filed prior to the passing of the statute.

Trial Examiner Myers: Another point in these cases cited by Mr. Harrington, the charge was filed more than three months after the making of the contract. In this case we have the making of the contract three months after the filing of the charge.

Mr. Harrington: Within three months of the



filing of the charge. The charge was filed in May, the contract was entered into in June.

Mr. Collins: The charge was filed before the making of the contract. The statute requires after making of the contract. You can't file an anticipatory action that isn't in any statute.

Mr. Harrington: The charge is directed towards domination and support of the Kinner Motors Employees Association, and that is what the charge is specifically directed to.

Now, the entering into a contract would be just another instance of domination and support. I might also add that when this contract was entered into both the Company and the [20] Association were under notice that the charge had been issued in respect to the Association. They entered into this contract with notice that the Board was proceeding in the matter.

Trial Examiner Myers: Does anybody else want to say anything either for or against the motion?

Mr. Collins: I have nothing further to say, except to repeat my request that this point be decided by formal order of the National Labor Relations Board before we be put to the expense of a trial.

Trial Examiner Myers: I will deny the motion to dismiss; that is, the motion to dismiss on the grounds that the rider to the Appropriation Bill is a bar to this proceeding.

If you want to take the matter up with the Board you may do so, either by 'phone or telegram. I won't suspend the hearing for the purpose of getting a decision, because we don't know when the

Board will have an opportunity to pass upon your application.

Mr. Collins: Then may the record show an exception and also any proceedings from here on are subject to our exception?

Trial Examiner Myers: Yes, sir. Are there any other objections?

Mr. Proctor: May that exception be taken on behalf of Kinner Motors Employees Association?

Trial Examiner Myers: I might say, reiterate that the [21] parties have an automatic exception to all my rulings, that is, they have exception to all the adverse rulings.

Mr. Collins: Then there is no necessity for us to enter an exception on the record.

Trial Examiner Myers: That is right. As I understand it, we will proceed with this hearing over your objection; is that right?

Mr. Collins: Right.

Mr. Proctor: Right. [22]

### JACOB DONALD SALTER,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name?

The Witness: Jacob Donald Salter.

Trial Examiner Myers: Will you please spell your last name for the record?

The Witness: S-a-l-t-e-r.

(Testimony of Jacob Donald Salter.)

Trial Examiner Myers: Where do you live, Mr. Salter?

The Witness: 1815 Fourth Street, San Fernando, California.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Harrington.

Q. (By Mr. Harrington) By whom are you employed, Mr. Salter?

A. By Kinner Motors.

Q. How long have you been employed by Kinner Motors? A. About thirteen months.

Q. Are you acquainted with Mr. Bob Clark?

A. Yes, sir.

Q. What is Mr. Clark's business?

A. He was an organizer for 727, the I. A. M., International Association of Machinists. [24]

Q. When did you become acquainted with him?

A. When he first started passing handbills out in front of the gate of Kinner Motors in Glendale.

Q. When was that?

A. About the 1st of March.

Q. Of what year? A. Of this year.

Q. This year. Where is Mr. Clark now?

A. Mr. Clark is in the Army now. [25]

Q. (By Mr. Harrington) After Mr. Clark went to the Army, what was done in respect to the organizational work of the International Association of Machinists?

Mr. Proctor: I object to that on the ground it isn't material, has no bearing on any issue here. The question is whether or not there was domina-

(Testimony of Jacob Donald Salter.)

tion by Kinner Motors in regard to the formation of Kinner Motors Employees Association, Inc. It makes no difference what may have happened between members of the A. F. of L. and their solicitation of members.

Trial Examiner Myers: The objection is overruled.

Will the Reporter please read the question to the witness?

(The question was read.)

The Witness: It was taken over by Lodge 311 of the International Association of Machinists.

Trial Examiner Myers: Approximately when did Mr. Clark go into the Army?

The Witness: Well, about the—I would say the second week in March, somewhere along there.

Trial Examiner Myers: This year?

The Witness: Yes, sir.

Q. (By Mr. Harrington) Have you ever heard of an organiza- [26] tion called the Kinner Motors Employees Association? A. Yes, sir.

Q. When did you first hear of it?

A. Immediately after Bob Clark was passing handbills out in front of the gate at Kinner Motors, about a week or ten days.

Q. What activity of the Kinner Motors Employees Association happened at that time?

A. Pardon?

Q. You say you first became acquainted with the Kinner Motors Employees Association at that time. In what manner did you become acquainted with it?

A. There were notices that appeared on the bul-

(Testimony of Jacob Donald Salter.)

letin boards in both plants, both Plant 1 and Plant 2.

Q. What did the notices state?

A. I don't remember just exactly; notices of meetings and formation of the Kinner Motors Employees Association. [27]

(Thereupon, the documents referred to were marked as Board's Exhibits 3 and 4, for identification, and were received in evidence.)

BOARD'S EXHIBIT No. 3

(Copy)

Pearson & Proctor

Attorneys at Law

Suite 218 Security Bank Building

Burbank, California

CHarleston 6-4448

STanley 7-2488

Stanley G. Pearson

Marlan A. Proctor

May 1, 1943

Kinner Motors Company, Inc.

635 West Colorado Blvd.

Glendale, California

Gentlemen:

Re: Petition of Kinner Motors Employees Association, Inc., for recognition as sole bargaining agent

Kinner Motors Employees Association, Inc., a California non-profit corporation, as a representa-

(Testimony of Jacob Donald Salter.)

tive of the majority of the employees of Kinner Motors Company, Inc., under and by virtue of the provisions of the National Labor Relations Act, hereby petition you for and demand recognition forthwith as the exclusive bargaining agency for all of your employees which Kinner Motors Employees Association, Inc., may deem necessary or advisable.

The purpose of said bargaining agency is to afford your employees a means and method of collectively bargaining with you through representatives of their own choosing and to engage in concerted activities for their mutual aid and protection.

Accompanying this petition are a number of cards signed by your employees which evidences the fact that more than 50% of your employees have designated Kinner Motors Employees Association, Inc., as their exclusive bargaining agent. As soon as you have checked these cards against your payroll record for the purpose of ascertaining the authenticity thereof, said cards are to be returned to Kinner Motors Employees Association, Inc., forthwith, and in any event Kinner Motors Employees Association, Inc., reserves the right to secure possession of said cards upon demand.

Yours very truly,

PEARSON & PROCTOR

.....

By Marlan Proctor

Attorneys for Kinner Motors  
Employees Association, Inc.

MAP:lr



(Testimony of Jacob Donald Salter.)

BOARD'S EXHIBIT No. 4

(Copy)

Kinner Motors Inc.

635 West Colorado Boulevard

Glendale, California, U. S. A.

May 7, 1943

Kinner Motors Employees Association, Inc.

912 East Glenoaks

Glendale, California

Attention: Mr. Robert L. Stevens, President.

Gentlemen:

The undersigned received your letter of May 1, 1943, and has now checked the cards signed by the employees of the undersigned. You are correct that these cards evidence the fact that more than fifty percent of our employees have designated Kinner Motors Employees Association, Inc. as their exclusive bargaining agent. It is our understanding that this compiles with the Wagner Act and the undersigned, therefore, recognizes Kinner Motors Employees Association, Inc. as the exclusive bargaining agent.

(Testimony of Jacob Donald Salter.)

We shall be very pleased to discuss any matters with your proper agent and representatives.

Very truly yours,

KINNER MOTORS, INC.

.....

Earl Herring,

President.

ERH:lo

cc: Pearson & Proctor, Attorneys.

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JOHN WILLIAMS,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name?

The Witness: John Williams.

Trial Examiner Myers: Will you spell your last name for the record?

The Witness: W-i-l-l-i-a-m-s. [29]

Trial Examiner Myers: Where do you live, Mr. Williams?

The Witness: 608 West Wilson, Glendale.

Trial Examiner Myers: You may proceed, Mr. Harrington.

Q. (By Mr. Harrington) By whom are you employed, Mr. Williams? A. Kinner Motors.

Q. How long have you been employed by Kinner Motors? A. Six years.

(Testimony of John Williams.)

Trial Examiner Myers: Can you hear Mr. Harrington?

The Witness: I can hear him if he talks a little bit louder.

Mr. Harrington: I can talk louder than that.

Q. (By Mr. Harrington) What type of work do you do in the plant?

A. Machinist, all kinds.

Q. What is your capacity? Do you have any title?

A. No, just a machinist, that is all.

Q. What type of work do you do?

A. All kinds pertaining to the machinist business.

Q. Who is your immediate superior?

A. Ed Davey.

Q. What is his title?

Trial Examiner Myers: Wait a minute. Ed who?

The Witness: Davey, D-a-v-e-y.

Trial Examiner Myers: Is that Edward Davey?

[30]

The Witness: That is right.

Trial Examiner Myers: Will the Reporter please read the last question?

(The question was read.)

The Witness: Works manager of Plant 1. [31]

Trial Examiner Myers: Very well, I will overrule the objection on Mr. Harrington's statement that it is leading up to the case in chief.

What work were you doing in October, 1942?

(Testimony of John Williams.)

The Witness: I think I was a leadman over the manufacture—over counterweights.

Q. (By Mr. Harrington) How long were you in that position? A. About five months.

Trial Examiner Myers: Let's get this straight. When did you first go with the company?

The Witness: Back in 1937.

Trial Examiner Myers: Now tell us all the jobs you held since 1937 up to date, if you can.

The Witness: Well, it has been every kind of a job pertaining to the manufacture of the Kinner Motors. [32]

Trial Examiner Myers: I don't mean the particular job. In October, 1942, you were a leadman?

The Witness: Yes.

Trial Examiner Myers: What did you do when you first came there, were you just a machinist?

The Witness: General Machinist.

Trial Examiner Myers: How long did you stay as a machinist?

The Witness: Until I took that there supervisor's job in October, September, somewhere in 1942.

Trial Examiner Myers: And when you say "that supervisor's job" you mean that leadman job?

The Witness: Yes, that is right.

Trial Examiner Myers: And you held that job for about five months; is that right?

The Witness: That is correct.

Trial Examiner Myers: Then what did you do after that?

(Testimony of John Williams.)

The Witness: Went back to the machine business.

Q. (By Mr. Harrington) When you say you held that job for about five months, can you place any closer the time when you ceased holding that job?

Trial Examiner Myers: As leadman?

Mr. Harrington: Yes, as leadman.

The Witness: I judge it was in the spring. I don't know exactly what the date was, or what month. [33]

Trial Examiner Myers: Can the parties stipulate when this witness was a leadman?

Mr. Collins: I don't know. I would have to check it up.

Trial Examiner Myers: Very well.

Mr. Collins: Do you know?

Mr. Proctor: No.

Q. (By Mr. Harrington) As leadman, what were your duties?

A. Set the machines up, see that the work was turning out all right.

Q. Did you have any employees under you?

A. I did.

Q. How many?

A. Oh, anywhere from eight to twelve at different times; sometimes as many as that and sometimes I only had two.

Q. What was your authority over those men?

A. Just to see they got the work out, and see I got the materials there for them to get it out.

(Testimony of John Williams.)

Q. Did you have any authority to hire?

A. I did not.

Q. Or to discharge?

A. No, I did not.

Q. Did you have authority to report on the workmanship of the employees under you, to Mr. Davey?      A. Absolutely. [34]

Q. What wages did you receive while you were a leadman?      A. Hourly wages?

Q. Yes.      A. \$1.35 an hour.

Q. What did the men under you receive?

A. There was a variation there. I don't exactly know, because I am not acquainted with what the rate of pay is they pay their employees there.

Q. Was your rate of pay higher than the rate of pay of the men under you?      A. It was.

Q. Could you approximate how much higher it was?

A. Oh, I should judge maybe I was getting about 25 cents an hour more than the highest paid one I had.

Mr. Collins: I move to strike that on the ground it is just guesswork. He has already stated he didn't know the other salaries.

Trial Examiner Myers: The motion is granted.

Now, what was your rate of pay before you became a leadman?

The Witness: \$1.30.

Q. (By Trial Examiner Myers) And what is your rate of pay now?      A. \$1.40.

Q. Was there any increase, general increase, be-



(Testimony of John Williams.)

tween the [35] time that you became a leadman, some time in September or October and the present time?      A. Yes.

Q. How much per hour?      A. Five cents.

Q. When you ceased to be a leadman and became a machinist again—I am using your words——

A. Yes.

Q. ——what was your rate of pay?

A. The same; they never reduced my pay.

Trial Examiner Myers: Go ahead, Mr. Harrington.

Q. (By Mr. Harrington) Did you ever assign work to other leadmen?

A. No, —to other leadmen?

Q. Yes.      A. I did not.

Q. Did you ever assign any work to be done on the Bullard machines in Plant No. 2?

A. I took it over there and, as a rule, I could get it done, yes. That was when they started up over there. I never—what word was that?

Q. Did you assign work?

A. No, I took it over there and had it done. I suppose you could call that assigning. I never had no authority. I took it there and asked them to get it done. [36]

Q. Who did you ask to get it done?

A. Whoever I—the superintendent over there or the man that had charge of the Bullards.

Q. Have you ever heard of an organization called Kinner Motors Employees Association?

A. I certainly have.

(Testimony of John Williams.)

Q. When did you first hear of it?

A. When I organized it.

Q. When did you organize it?

A. I don't know exactly the date, but I think it was back in last April, '42—'43, yes.

Q. April of 1943? A. Yes.

Q. How did you go about organizing it? Just tell the steps you took in organizing it.

A. Well, I thought it would be a fine thing that the employees all get together, it would be beneficial all the way around.

Q. What did you do about organizing it?

A. I felt out several other employees there and they thought the same thing.

Q. Who were the employees you felt out?

A. Pardon?

Trial Examiner Myers: What do you mean you "felt out"? Do you mean you spoke about it to them? [37]

The Witness: I did.

Trial Examiner Myers: All right.

Q. (By Mr. Harrington) Who did you speak to? A. Mr. Sharrar and Gilbert.

Trial Examiner Myers: Who are these people?

The Witness: Pardon?

Trial Examiner Myers: Who are these people, employees of the company?

The Witness: Employees of the company.

Q. (By Mr. Harrington) And after you discussed it with them, what did you do?

A. Well, I was notified about Mr. Proctor there, and so I went up to see him about it.

(Testimony of John Williams.)

Q. How were you notified about Mr. Proctor?

A. Talking about it up in the bowling alley one night, one Friday evening. I got to talking to some of the fellows up there from some other company. They said they had the same kind of a company, and they recommended Mr. Proctor to me as their attorney; so I went up to see him.

Q. Just a moment. You said that some other organization had the same kind of a company.

A. I don't know exactly whether——

Trial Examiner Myers: You mean a union?

The Witness: Yes.

Mr. Harrington: That is what I am getting at, Mr. [38] Examiner.

Q. (By Mr. Harrington) You testified that you discussed the organization of this association with Mr. Sharrar and Mr. Gilbert?

A. Yes.

Q. Can you relate what was—first, how many discussions did you have with them, Mr. Williams, about it?

A. Pardon? What was that?

Q. How many discussions did you have with Mr. Sharrar and Mr. Gilbert about forming the Association?

A. Oh, I don't suppose more than about two at the time, before I went up to see Mr. Proctor.

Q. What was said in those discussions?

A. They said they thought it would be all right.

Q. What did you say?

(Testimony of John Williams.)

A. I was the one that suggested it, and I thought it would be a fine thing for all the members to get together. It would bring a closed contact between the employees and the management.

Q. Was the International Association of Machinists intending to organize the plant at that time?

A. They were handing out handbills out at the gate, and also passing out cards in the shop.

Q. Now, you testified you went to see Mr. Proctor? A. Yes. [39]

Q. Can you place the date of that?

A. I know it was on a Saturday, that is all.

Trial Examiner Myers: Do you know what month it was?

The Witness: I think it was in April.

Trial Examiner Myers: This year?

The Witness: That is right.

Trial Examiner Myers: That is Mr. Marlan Proctor?

The Witness: Mr. Marlan Proctor over there (indicating). I think it was in April.

Q. Who was with you when you saw Mr. Proctor?

A. When I went to see Mr. Proctor I was alone.

Trial Examiner Myers: Can you fix what part of the month it was, whether it was the first part, middle or second part or third part?

The Witness: It may have been somewhere around the 20th of the month. I am not sure, though.

(Testimony of John Williams.)

Mr. Proctor: For the purpose of the record—I don't want to try to lead the gentleman—but the articles of incorporation were filed on April the 5th. His meetings, of necessity, had to be in March.

Mr. Harrington: Thank you.

The Witness: I didn't remember the dates of the month.

Trial Examiner Myers: Can the parties stipulate that this witness first saw Mr. Proctor, regarding the intervenor in this proceeding, sometime in the latter part of March? [40]

Mr. Collins: I will so stipulate.

Mr. Proctor: It was sometime in the early part of March.

Trial Examiner Myers: You fix the date.

Mr. Proctor: I can't fix the exact date. It was in the early part of March.

Trial Examiner Myers: Early part of March, 1943?

Mr. Proctor: Yes.

Trial Examiner Myers: Do you so stipulate, Mr. Harrington?

Mr. Harrington: Yes.

Trial Examiner Myers: And you, Mr. Collins?

Mr. Collins: Yes.

Trial Examiner Myers: Thank you, Mr. Proctor.

Q. (By Mr. Harrington): When you went to see Mr. Proctor, what conversation did you have with him?

A. I asked him all about what procedure to go

(Testimony of John Williams.)

through to form anything like this here. He advised me that the best thing would be to form a corporation, and I would have to get two others to form the corporation, which I did. We went back to see him on the following Monday; whatever date that was, I don't know.

Q. Who went with you on the following Monday?

A. Howard Sharrer and Orville Gilbert.

Q. What occurred at that time?

A. We took it up with Mr. Proctor to apply to Sacramento [41] for the papers for incorporation.

Q. Did you thereafter incorporate?

A. Mr. Proctor took it up and got the incorporated papers. [42]

Q. (By Mr. Harrington): Did you take any other steps at that time towards organizing this Association?

A. I don't know whether I—I don't remember whether I took any steps then until after it was incorporated. I am not so sure.

Q. Were any Association cards passed around among employees [43] at that time, around March 22nd?

A. No, we never had them printed at that time.

Q. When were cards printed?

A. Oh, I should judge that must have been about two weeks after that there, after we were notified they were sent away to be incorporated.

Q. That would be sometime in April?

A. That is right.



(Testimony of John Williams.)

Q. What occurred after you signed the articles of incorporation, as far as the organization of the Association was concerned?

A. Well, we had cards printed and distributed them amongst the employees and got their names in that was willing to join the Association.

Q. Were any meetings held around that time?

A. There wasn't any until we—we had several names, then I called a meeting.

Mr. Harrington: May it be stipulated by counsel for the company and counsel for the Association that——

Trial Examiner Myers: And by counsel for the Board?

Mr. Harrington: ——and by counsel for the Board, that the general meeting of the Association was held on April 16, 1943; that a second meeting was held on April 23, 1943; and that a meeting of the board of directors was held on April 30, 1943?

Mr. Proctor: I will so stipulate there were meetings [44] on those dates, and they were attended by me.

Trial Examiner Myers: Will you so stipulate?

Mr. Collins: I have no knowledge, naturally, as to the date of it. I have no objection to its going in.

Trial Examiner Myers: You have no stipulation, Mr. Harrington.

Mr. Collins: I will stipulate to it, that they were held at that time. My stipulation being based not on my own knowledge, but the statement of Mr. Proctor.

(Testimony of John Williams.)

Trial Examiner Myers: You will have to stipulate or he will have to prove it.

Mr. Collins: I will stipulate, but I want the record to show it is not based on any knowledge of my own or the company, but on Mr. Proctor's statement.

Mr. Harrington: So stipulated.

Trial Examiner Myers: The organization you refer to is the intervenor in this proceeding?

Mr. Harrington: I beg pardon?

Trial Examiner Myers: You were talking about certain meetings——

Mr. Harrington: Of the Kinner Motors Employees Association.

Trial Examiner Myers: Is that the thing you had in mind, Mr. Collins?

Mr. Collins: Yes. [45]

Trial Examiner Myers: And you, Mr. Proctor?

Mr. Proctor: Yes.

Q. (By Mr. Harrington): Who was chairman at the first meeting of the Association?

A. Mr. Stevens.

Q. Is that Mr. Robert Stevens?

A. Correct.

Q. How was he selected as chairman?

Trial Examiner Myers: Wait a minute. Who is Stevens?

The Witness: He is an employee.

Trial Examiner Myers: Of the Kinner Motors?

The Witness: Of the Kinner Motors, yes sir.

(Testimony of John Williams.)

Q. (By Mr. Harrington): Who selected him as chairman? A. I did.

Q. Beg pardon? A. I did.

Q. When? A. Just before the meeting.

Q. How long had Mr. Stevens been employed by the company?

A. Well, I think about, at that time he had been there about a month or six weeks.

Q. Why did you select him?

A. I was given to understand that he knew all the procedure about—how to carry on a meeting.

Q. Who gave you to understand that? [46]

A. Different fellows in the shop; that they knew him through these other affiliations.

Q. Can you name any of those persons?

A. I don't know offhand; that is a long time ago.

Q. And what led you to believe that he had experience in conducting meetings?

A. The way I heard about it was that he had experience with the American Legion and some other organizations, and he had experience and knew the formality of handling meetings that way. So I appointed him to hold the first meeting and then he was elected the following meetings.

Q. And he acted as chairman at the second meeting also? A. He did.

Q. Did you know Mr. Stevens before he came to work for the company? A. I did not.

Q. Are you at present a member of the Association? A. I am.

(Testimony of John Williams.)

Q. And have you been since its inception?

A. I have.

Q. Do you hold any office in the association?

A. Not at present, no.

Q. Did you hold any office at any time?

A. I did.

Q. What was that office? [47]

A. Director.

Q. When?

A. From the first election of officers until two weeks ago come tomorrow.

Q. And when was the first election of officers?

Trial Examiner Myers: He means what meeting. You had three meetings, as I understand. Is that right, three meetings?

Mr. Proctor: Two meetings and one of the board of directors, I may stipulate.

The Witness: I think that was the second meeting.

Mr. Harrington: Thank you.

Trial Examiner Myers: All right. And all the officers were selected at that meeting?

The Witness: That is right, sir.

Trial Examiner Myers: Where were these meetings held?

The Witness: The American Legion Hall.

Trial Examiner Myers: In Glendale?

The Witness: In Glendale.

Q. (By Mr. Harrington) As a member of the board of directors did you attend any meetings with

(Testimony of John Williams.)

the company at about that time, that is, after you were elected?

A. The agreement, when we signed the agreement, yes.

Q. I see. Did the company enter into a contract with the Association? [48]

A. They did.

Q. When?

A. I really don't know what date.

Trial Examiner Myers: Have you a copy of the contract?

Mr. Proctor: I think the contract speaks for itself.

Trial Examiner Myers: If you show a copy of the contract to the witness he might remember the date.

Mr. Harrington: May it be stipulated by counsel that Board's Exhibit 6, for identification, is an agreement between the Kinner Motors, Inc., and the Kinner Motors Employees Association, Inc.; that the effective date is June 16, 1943?

Mr. Proctor: So stipulated.

Mr. Collins: So stipulated.

Trial Examiner Myers: When was the contract signed, June 16, 1943?

Mr. Harrington: I was going to develop that later. I am not sure myself. My understanding is it was signed a day or so later.

Mr. Proctor: Mr. Stevens: says it was signed at 4:25 on June 16th. On the basis of his statement I will stipulate it was so signed.

Mr. Harrington: I will so stipulate.

(Testimony of John Williams.)

Mr. Proctor: I have forgotten.

Trial Examiner Myers: He said the effective date. [49]

Mr. Collins: I don't know whether it was dated or signed the 17th.

Trial Examiner Myers: Would you say on or about June 16, 1943?

Mr. Proctor: That is quite satisfactory.

Mr. Collins: That is satisfactory.

Mr. Harrington: I so stipulate.

Q. (By Mr. Harrington) Was this contract distributed to the employees? A. Pardon?

Q. Was the contract distributed to the employees? A. It was.

Q. When, do you know? [50]

A. That I couldn't tell. It was about a month afterwards, I think. It was a long time before we got the little pamphlets printed up. I wouldn't know exactly the date.

Q. In what manner was it distributed?

A. Distributed through the personnel department, as it is at the present time. Whenever an employee comes in they get a copy of this contract that is in force right at the present time.

Trial Examiner Myers: What do you mean? If an employee wants a copy of the contract, he goes to the personnel office?

The Witness: No, they give it to them, all the employees. At the time the contract came out it was distributed to each and every one of the employees



(Testimony of John Williams.)

of the firm. Any new employee that comes in now, as they get employed, they get a copy of that given to them.

Trial Examiner Myers: At the time this was distributed, how was it distributed? That is what Mr. Harrington asked you.

Mr. Harrington: Yes, that is my question.

The Witness: I think it comes through the personnel department, sent around to every man in the employ.

Trial Examiner Harrington: How did you get your copy?

The Witness: I guess I had mine given to me by someone from the personnel department.

Mr. Proctor: May I take this witness for just one [51] moment, your Honor?

Trial Examiner Myers: For what purpose?

Mr. Proctor: For the purpose of asking him whether or not it was true these contracts were handed out in the separate meetings of the union.

Trial Examiner Myers: You can bring that out on cross examination.

Mr. Proctor: I thought perhaps it would clarify the record.

Trial Examiner Myers: Did you hear Mr. Proctor's statement?

The Witness: He said something about a meeting.

Trial Examiner Myers: He says it is his recollection that copies of the contract were distributed

(Testimony of John Williams.)

at a meeting of the organization, that is, Kinner Motors Employees Association. Is that right?

The Witness: Maybe so; maybe I wasn't at that meeting.

Trial Examiner Myers: All right. Go ahead, Mr. Harrington.

Q. (By Mr. Harrington) But were copies distributed by the personnel office?

A. I know they have since. They get all employees as they come in, they give them a copy of this when they are employed.

Trial Examiner Myers: Well, I don't think you should follow that point up, because Article 12 provides how copies [52] of the contract should be distributed.

Mr. Harrington: May I see it?

Trial Examiner Myers: Yes.

Q. (By Mr. Harrington) I show you a blank application for membership, which is set out right inside the front cover of the contract,—

A. Yes.

Q. —do you know how that happened to become a part of the contract?

A. I do not. Well, that is the same—that is the copy of the first cards I had printed. That was before the agreement was made.

Trial Examiner Myers: I think you are a little wrong there. You said in the front of the booklet, which contains the contract, which is Board's Exhibit No. 6. I think you mean the back.

(Testimony of John Williams.)

Mr. Harrington: It is in the front of the copy I have.

Trial Examiner Myers: My copy has it in the back and your copy has it in the front.

Mr. Proctor: We will have to revise our stipulation.

Trial Examiner Myers: All right. You better make it "included in the booklet" which contains the contract.

Mr. Harrington: Yes, that would be better.

Q. (By Mr. Harrington) Do you know how the application for membership in Kinner Motors Employees Association, Inc., [53] which is included as part of Board's Exhibit 6, was inserted in Board's Exhibit 6?

A. I think that came in the agreement between the Association and Kinner Motors, Inc.

Q. Do you know what part of the agreement?

A. No, I don't know.

Q. Did you participate in negotiations between the company and the Association with respect to this contract? A. I did.

Q. Was anything mentioned about including an application for membership in copies of the contract?

A. Offhand I wouldn't remember.

Q. You don't remember anything being said about that? A. No.

Q. Who is the personnel director of the company?

Trial Examiner Myers: When?

(Testimony of John Williams.)

The Witness: Mr. Sullivan.

Trial Examiner Myers: Wait a minute.

Q. (By Mr. Harrington) How long has Mr. Sullivan been personnel director?

A. I judge about the last eighteen months, or something like that. I wouldn't know for sure.

Trial Examiner Myers: What is Mr. Sullivan's first name?

The Witness: That I don't know. [54]

Trial Examiner Myers: Very well, sir.

Mr. Harrington: Can we stipulate it is Mr. E. J. Sullivan? That Mr. E. J. Sullivan is personnel director of the company?

Mr. Collins: I don't remember the initials, myself. I think that is correct. I always call him Sully. It is like so many of those names, you forget the initials. I don't remember. I may have it in the file. I think it is E. J.

Trial Examiner Myers: Can you stipulate it is E. J. Sullivan?

Mr. Collins: I will so stipulate.

Mr. Proctor: On hearsay testimony I will so stipulate.

Mr. Harrington: We can get his name.

Mr. Proctor: I will stipulate.

Mr. Harrington: So stipulated.

Q. (By Mr. Harrington) Are you a stockholder in the company, Mr. Williams?

A. I am not.

Q. Have you ever been?

A. No.

(Testimony of John Williams.)

Q. Do you have a relative working for the company?      A. I have.

Q. Who?      A. My son.

Q. What is his name? [55]

A. George Williams.

Q. What does he do?

A. He is chief inspector.

Trial Examiner Myers: What plant?

The Witness: Plant 1.

Trial Examiner Myers: Is that the plant you work in?

The Witness: Yes.

Mr. Harrington: May it be stipulated by counsel that the first president of the Association was Robert L. Stevens; that the vice president was Oscar Kastman; that the treasurer was Lynn Brown; that the board of directors were Walter E. Sigafoose, Jim Brown, Jack Williams, Walter Evers, Kenneth Enlows, Floyd Parr and Harry Brown?

Mr. Proctor: Those are all the names that were included in that list in the lower portion?

Mr. Harrington: Yes.

Mr. Proctor: So stipulated.

Mr. Collins: I have no actual knowledge of it. I will so stipulate.

Trial Examiner Myers: Those people signed this agreement on behalf of the Association didn't they?

Mr. Harrington: Yes.

Mr. Collins: I will so stipulate. I, of course,

(Testimony of John Williams.)

have no personal knowledge of it nor does the company. To save time I will so stipulate. [56]

Trial Examiner Myers: Will you so stipulate?

Mr. Proctor: Yes.

Trial Examiner Myers: You say Jack Williams. Is that the witness?

Mr. Harrington: I was just going to ask the witness.

Q. (By Mr. Harrington) Are you the Jack Williams mentioned in the contract?

A. Yes.

Mr. Proctor: You are also known as John Williams?

The Witness: Yes, Jack for short. [57]

Q. (By Mr. Harrington) Have any officials of the Association been promoted by the company since its formation? A. Yes.

Q. Who? Can you name them?

A. Howard Sharrar.

Q. What was he at the time the Association was formed? What was his position?

A. Machinist.

Q. What is his position now?

A. Night superintendent of Plant 2.

Trial Examiner Myers: When did he get that job, do you know?

The Witness: About two months ago.

Q. (By Mr. Harrington) What position did Mr. Sharrar hold in the Association?

A. What position?



(Testimony of John Williams.)

Q. Yes. A. Now?

Q. No. I asked you were any officials of the Association promoted, and you said Mr. Sharrar was. I am asking you what his position was.

A. I misunderstood you. He was not an official of the association.

Trial Examiner Myers: Just one of the incorporators, is that right? [59]

The Witness: Yes, —well, he was elected in office, but he only held the office for about three months, I think, and resigned.

Q. (By Mr. Harrington) What office was he elected to? A. Director.

Q. He was a member of the board of directors for about three months?

A. Yes; board of directors.

Q. Over what period of time was he a member of the board of directors?

A. From the inception until about—he held it for about three months.

Q. That would bring it up to June or July? Or can you place it any closer than you have?

A. It would be later than that, because the election was—he hadn't held the position in the Association for the last three months, or over. [60]

Mr. Harrington: I would like to recall Mr. Williams for one or two questions.

Trial Examiner Myers: Will you take the stand, please, Mr. Williams?

## JOHN WILLIAMS,

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, was recalled and testified further as follows:

## Direct Examination

Q. (By Mr. Harrington) Mr. Williams, were you the leadman in March and April of this year?

A. I think so.

Mr. Harrington: I have no further questions.

Trial Examiner Myers: Are there any other questions, gentlemen?

## Cross Examination

Q. (By Mr. Proctor) March and April of 1943? A. Yes.

Q. Did you think you were a leadman at the time this organization was first formed? When you first came to my [97] office were you a leadman or had you been reduced in rank, as it was?

A. I think I was.

Q. You think you were a leadman?

A. Yes.

Mr. Proctor: That is all.

Mr. Harrington: I have no further questions.

ORVILLE GILBERT,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name?

The Witness: Orville Gilbert.

Trial Examiner Myers: Will you please spell your entire name for the record?

The Witness: O-r-v-i-l-l-e G-i-l-b-e-r-t.

Trial Examiner Myers: Where do you live, Mr. Gilbert?

The Witness: 1267 Sonora, Glendale.

Trial Examiner Myers: You may be seated.

You may proceed, Mr. Harrington. [98]

Q. (By Mr. Harrington) Are you employed by Kinner Motors? A. Yes.

Q. How long have you been employed by Kinner Motors? A. Nine years.

Q. What position did you hold in the plant in January of 1943? A. Leadman.

Q. How long were you a leadman?

A. Before January?

Q. No, after January.

A. Up to the present time, right now; I am still a leadman.

Q. As a leadman, what are your duties?

A. Just the same—seeing that the work is carried out all right. Help the men get started.

Q. How many men do you have under you?

A. I imagine about twelve.

(Testimony of Orville Gilbert.)

Q. Have you had that many men under you all this year?

A. No, it has increased about three or four in the last couple of months.

Q. Do you do any manual work or labor, yourself?      A. Not very much, no.

Q. What are your wages?      A. Per hour?

Q. Yes.      A. \$1.40. [99]

Q. (By Trial Examiner Myers) When you say you don't do much manual work, what do you mean by that?

A. If a fellow has a breakdown, or something, he comes to me and I help him get started; just a little repair job.

Q. Otherwise, what do you do?

A. I am just a leadman. I see that everything is going all right.

Q. What do you do? I have never been out to the plant and I haven't the slightest idea what you do.

A. I am leadman over the Bullards. There are eleven Bullards and three multimatrics. And I just help these men get started, keep the work to them, that is all.

Q. Well, tell us just what you do. You work eight hours a day?      A. Ten.

Q. All right. Can you tell us what you do in an average day?

A. You mean how much work——

Q. When you go to the plant tell us from the

(Testimony of Orville Gilbert.)

very time you walk into the plant up to the time you leave for the day what you do.

A. I go in and ring in, just like anybody else. I ring my time card in. I ring my time card in and I work on a job just like the same as any of the production men there; that is all. I walk around and see the fellows get started on time [100] and if they have any trouble they usually come to me and ask me this or that, or what I want done next, or what they are supposed to do next.

Q. What do you say?

A. I tell them what to do. I tell them what is to be done next, that is all.

Q. Have you any authority to hire anyone?

A. No, sir.

Q. Or to fire anyone?                      A. No, sir.

Q. Who has that authority?

A. Mr. Burland, I imagine, would be the one to fire them; but the personnel takes care of all hiring.

Q. Who is Mr. Burland?

A. He is assistant works manager, Plant 2.

Q. Do you work at Plant 2?                      A. Yes.

Q. Did you ever work at Plant 1?

A. Yes, sir.

Q. And when did you work at Plant 1?

A. Up until about October or November of 1942.

Q. Then you were transferred?

A. To Plant 2, yes, sir.

Q. Have you any power or authority to recommend the discharge of anyone? [101]

(Testimony of Orville Gilbert.)

A. Yes, if they don't happen to do their work right I tell Mr. Burland he is not producing what he should, something to that effect, he is not doing right.

Q. You mean a certain employee is not producing——

A. Yes.

Q. ——as much as he should? A. Yes, sir.

Q. Then what happens?

A. Mr. Burland takes care of the rest.

Q. In what way?

A. If he thinks—he uses his own judgment. If he thinks he ought to be fired, he will fire him.

Q. And have you ever recommended anybody for discharge?

A. Not particularly discharge. I recommended two that weren't doing the right thing.

Q. What happened? A. They let them go.

Q. You mean they discharged them?

A. Yes, sir.

Q. Do you assign any work to anybody?

A. Yes.

Q. In what way?

A. That is all, if there is a particular job that is finished on one machine and ready for another machine, why, I see that the other machine does it.

[102]

Q. Do you tell the employees to go from one job to another? A. That is right, yes sir.

Q. And do they report to you at any time, that is, the employees, about the condition of the job: that the job is finished?



(Testimony of Orville Gilbert.)

A. Oh, yes, yes. If it is not working right they come and tell me about it.

Q. Then what do you do?

A. If it is something wrong, something wrong with a particular casting I try to find out what is the matter. Or if something is wrong with the tools they are working with I try to find out what is the matter with them.

Q. When the job is finished, what happens?

A. It is passed on to the next machine.

Q. Have you ever recommended anybody for a change of job, from one job to another?

A. No, no sir.

Q. You say you have two kinds of employees working for you?

A. Well, there are two different kinds of machines, multimatic is a different kind of machine—made by the same company, but they are an automatic machine.

Q. Do you change some of the employees from one machine to another, from time to time?

A. Yes.

Q. In your discretion?

A. Well, if there is a particular job to be done they are [103] in a hurry for on this machine, why, yes, I can change them over to that machine.

Q. You can take a man off one job and put him on another?

A. Yes, sir.

Q. Who is your immediate superior?

A. Mr. Burland.

(Testimony of Orville Gilbert.)

Q. How long has he been your immediate superior?

A. Ever since I have been at Plant 2, since October—October or November of 1942.

Trial Examiner Myers: Go ahead, Mr. Harrington.

Q. (By Mr. Harrington): I believe I asked you what your wages, your hourly rate was.

A. Yes sir; \$1.40.

Q. What is the top rate of the men under you?

A. I don't know for sure, but I think it is \$1.30.

Q. I believe you testified about George Burland. Is he your immediate superior?

A. Well, now, within the last couple of weeks there has been a superintendent, day superintendent on Plant 1, so I suppose he would be my immediate——

Trial Examiner Myers: Plant 1?

The Witness: Plant 2; I am sorry.

Q. (By Mr. Harrington): Until two or three weeks ago was there anyone between you and George Burland? A. No, sir. [104]

Q. How many workers are there in Plant 2?

A. I imagine about 200, as close as I can guess.

Q. Is Burland over those 200?

A. Yes, sir.

Q. Does Burland come around every day and watch the men at their work?

A. Oh, sometimes, yes, to see what they are doing.

(Testimony of Orville Gilbert.)

Q. Have you ever recommended wage increases for men under you?

A. Yes, once or twice.

Trial Examiner Myers: What happened?

The Witness: One case it went through all right; another case it didn't.

Q. (By Mr. Harrington): Are you acquainted with the Kinner Motors Employees Association?

A. Yes, sir.

Q. When did you first become acquainted with it?

A. I should imagine February or March, 1943.

Q. Were you one of the incorporators of that Association?      A. Yes, sir.

Q. What was your purpose in helping to start the Association?

A. Just to get something started that we could deal with the company with.

Q. Do you know Robert Stevens? [105]

A. Yes.

Q. Do you know how he became chairman of the first meeting?

A. No, I can't really say that I know right off-hand. No, I don't know.

Q. Have you held any office in the Association since its incorporation?      A. No, sir.

Q. Are you still a member of it?

A. No, sir.

Q. When did you cease being a member?

A. The fact is I never was a member.

Q. You never joined it?      A. No, sir.

(Testimony of Orville Gilbert.)

Trial Examiner Myers: You incorporated it, but you never joined it?

The Witness: That is right.

Trial Examiner Myers: Why?

The Witness: Because I thought—I was an old man and I thought if I would get in there some of the newer employees would think I was trying to run the outfit, run the union, so I never joined.

Q. (By Mr. Harrington): What position do you have in the plant today? A. Leadman.

Q. You are still leadman? [106]

A. Yes, sir.

Q. Have you had any promotions within the last two or three months? A. No, sir.

Q. Did you participate in any way in negotiating the contract between the company and the Association? A. No, sir.

Q. Did you attend any meetings?

A. With the company?

Q. Yes. A. No, sir.

Trial Examiner Myers: Did you attend any union meetings?

The Witness: No, sir.

Q. (By Mr. Harrington): Mr. Gilbert, do you know anything about this application for membership in the Association, which is a part of the contract? A. No, I don't.

Q. You don't know anything about it?

A. No.

Q. Did you attend the meetings between Mr. Williams and Mr. Proctor? A. Yes, sir.

(Testimony of Orville Gilbert.)

Q. When the Association was incorporated?

A. Yes, sir.

Q. And you signed the articles of incorporation?  
[107]

A. Yes, sir.

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### HOWARD SHARRAR,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name?

The Witness: Howard Sharrar.

Trial Examiner Myers: Will you please spell your last name for the record?

The Witness: S-h-a-r-r-a-r.

Trial Examiner Myers: And where do you live?

The Witness: 1021 San Rafael, Glendale.

Trial Examiner Myers: You may be seated.

You may proceed, Mr. Harrington.

Q. (By Mr. Harrington): Are you employed by Kinner Motors, Inc.?

A. That is right.

Q. How long have you been employed?

A. Four years.

Q. What work do you do in the plant?

Mr. Proctor: I object to that on the ground it has no proper foundation.

Trial Examiner Myers: The objection is overruled. [120]

(Testimony of Howard Sharrar.)

The Witness: At what time?

Trial Examiner Myers: What work do you do at the plant? That means at the present time.

The Witness: At the present time I am the night superintendent.

Q. (By Mr. Harrington) And what were you doing in March of 1943?

A. Primary machine setup man.

Q. Were you a leadman at that time?

A. No.

Q. How long had you been doing that machine setup work?

A. I had been doing that machine setup work up until about six weeks ago.

Q. Who was your immediate superior in March of this year? A. In March of this year?

Q. Yes.

A. My immediate superior at that time was a fellow by the name of Ira Hutchins.

Trial Examiner Myers: What plant did you work in?

The Witness: Plant 2.

Q. (By Mr. Harrington) What rate of pay did you start at? A. At that date——

Q. No, when you started to work.

A. When I started? 90 cents.

Q. What rate of pay were you getting in March of this year? [121] A. \$1.15.

Trial Examiner Myers: Per hour?

The Witness: Per hour.



(Testimony of Howard Sharrar.)

Q. (Mr. Harrington) And what were you classified when you were getting \$1.15 an hour?

A. I was classified as toolmaker. [122]

Q. (By Mr. Harrington) Mr. Sharrar, do you recall making an affidavit in this case in September?

A. I do.

Q. Do you recall in that affidavit saying you were a leadman?

A. No, I don't recall stating that.

Q. Is that your signature (indicating)?

A. That is right.

Q. Is this correct, Mr. Sharrar,

"I started working for Kinner Motors, Inc., Glendale, on or about August 1, 1941. When I started my job was to make the crankshafts ready for final inspection."

A. That is right.

Q. (Reading) "Ed Davey, who was then shop foreman, was my immediate superior. I believe I started at 85 cents per hour and received periodic raises until Plant No. 2 was built, and then I went into No. 2 at \$1.10 per hour. I came into Plant No. 2 shortly after it was built last year, but I cannot recall now just what month that was. For several weeks then I was an ordinary worker in the tool-room. Then I was made a leadman and at that time I was raised to \$1.15 per hour." [124]

Is that correct? A. That is correct.

Q. You made that statement?

A. That statement, yes.

(Testimony of Howard Sharrar.)

Mr. Proctor: I think we should have an opportunity to go see that before he is cross-examined on it, or examined on it.

Mr. Harrington: I haven't had it marked for identification. I wasn't introducing it in evidence, I was merely attempting to——

Mr. Proctor: It is being used for the purpose of impeachment and I don't think that you can use it until counsel has seen it. I move all the testimony given in that regard so far be stricken.

Trial Examiner Myers: Show it to the counsel. The motion to strike is denied.

Q. (By Mr. Harrington) Is it true then, Mr. Sharrar, you were leadman?

A. No one had told me whether it was leadman. I was all over. I wasn't in charge of any one at all.

Q. Were there any employees under you?

A. No. The only thing I had to do was just set up, primary setup on that and turn it over to the leadman.

Q. I read further from your affidavit:

"I held this job as leadman for six or seven months. During this period there were eighteen or twenty men [125] under me, and they operated milling machines, shapers, jig borers, grinders, engine lathes, and drill presses, that is, all the machinery in the 'toolroom' of Plant No. 2."

A. That is right. My job was to explain the prints on the new setup on there. I was responsible for the prints, so they got the work out.

(Testimony of Howard Sharrar.)

Q. What did you mean when you stated there were eighteen or twenty men under you?

A. I was to get the prints to them, explain the job to them, and see that the stock was there.

Trial Examiner Myers: What else?

The Witness: See that the stock was there so they could do the work.

Q. (By Trial Examiner Myers) And what else did you do? A. I would go from man to man.

Q. And if the stock wasn't there, what would you do? A. I would go cut the stock.

Q. Cut the stock? A. Yes.

Q. And give it to the men?

A. That is right.

Q. And then what happened?

A. Then I would go on to the next fellow and get his print and cut more stock, if he needed it. [126]

Q. Until all the men had enough stock?

A. That is right. And as they run out I would give them other jobs.

Q. When they finished with one job, what would happen?

A. I would be right there to get them another.

Q. You gave them another one? A. Yes.

Q. You kept on giving them jobs?

A. I kept on going around all the time.

Q. Seeing that they were doing the job?

A. No, that wasn't my duty, to see that they were doing the job. My duty was to see they had the print, and if they were in trouble on prints to explain it to them and see they had the stock.

(Testimony of Howard Sharrar.)

Q. Did you have any leadmen in your department?      A. Hutchins was the foreman.

Q. I mean in March, 1943.

A. No, Mr. Hutchins was the foreman and I was acting under him, to keep the men busy; helping him, in other words.

Q. You didn't have any leadmen at that time?

A. No.

Q. How many men were in that department?

A. There were about eighteen or twenty at that time.

Q. Where would Hutchins be, right in that department all the time? [127]

A. He would be right in that department all the time.

Q. What was his title?

A. He was foreman.

Q. Of what department?      A. Toolroom.

Q. And he would see that you did your work?

A. That is right.

Q. And see that the other men did their work?

A. That is right.

Q. Was he there all the time for eight hours?

A. Ten hours.

Q. Ten hours?      A. Yes.

Q. He was there all the time?      A. Yes.

Q. Excepting when he was out for lunch?

A. Yes.

Q. Was all the department gone to lunch at one time?      A. That is right.

Q. Did it ever happen that he was away from the plant while you were working in there?

(Testimony of Howard Sharrar.)

A. Not for any longer time than just a few minutes.

Q. I mean for a day. A. Oh, no.

Q. Was he out sick? A. No. [128]

Q. Did he take a vacation at all?

A. Not during that time, no.

Q. Well, how long have you been holding that job you were just telling me about, setup?

A. That job there, I held that, oh, six or eight months, something like that.

Q. When did you first get it, did you say?

A. Along in the fall of the year, it was before Christmas, about a month or two before Christmas.

Q. 1942? A. That is right.

Q. You held that up to how long?

A. That job, that particular job was held up for about six or eight months. Then I went out on the main floor out in the shop and set up the new machines as they come in and turned them over——

Q. When you were in this toolroom department, did Hutchins ever take a vacation?

A. He took a vacation, yes.

Q. Who took his place when he was gone?

A. A fellow by the name of Cliff Malamphi.

Q. What was his job before he took Hutchins' place?

A. He was over in Plant 1. He was in the toolroom there doing about the same type of job I was doing in Plant 2.

Q. He came over? [129] A. Yes.

(Testimony of Howard Sharrar.)

Q. Where were you when Hutchins was on his vacation?      A. I was there in the toolroom.

Q. And this man was doing the same work over in Plant 2 that you had been doing in Plant 1?

A. That is right.

Q. Did you stay where you were in Plant 1?

A. Yes, that is right.

Q. How long was Hutchins away?

A. A week.

Q. When was that, do you know?

A. I don't remember.

Q. In the fall, spring, was it?

A. It was in the fall. It was just shortly after we had gone over there in the new plant.

Trial Examiner Myers: Go ahead, Mr. Harrington.

Q. (By Mr. Harrington): Did you do any manual work yourself on production while you held that job?      A. While I was in the toolroom?

Q. Yes.      A. Not on production, no.

Q. Did you have any authority to recommend transfer of employees?      A. No.

Q. Did you recommend any wage increases?

[130]

A. No.

Q. After you ceased holding that job, what did you do?      A. In the toolroom?

Q. Yes.

A. I went out on the production floor.

Q. (By Trial Examiner Myers): What was



(Testimony of Howard Sharrar.)

the type of that job that you had in the toolroom, if there was any title to it?

A. I don't think there was any title to it, only just as I told you it was more or less leadman instructing men how to do the work. But as far as authority was concerned, there wasn't any.

Q. Did you have a timecard? A. Yes, sir.

Q. Was there anything on that timecard that designated what your job was? A. No, sir.

Q. Did your job have a name or anything like that? A. No.

Q. (By Mr. Harrington): Are you acquainted with the Kinner Motors Employees Association?

A. Yes, sir.

Q. When did you first hear of it?

A. About the 17th, 15th or 17th or 20th, somewhere along in there, in March.

Q. Who did you first hear of it from? [131]

A. Mr. Williams.

Trial Examiner Myers: John Williams?

The Witness: John Williams.

Q. (By Mr. Harrington): And what did Mr. Williams tell you about it at that time?

A. Well, all he said was he thought it would be a good plan to form an organization of our own as sole bargaining agent for the employees of Kinner, to bargain with the management of Kinner's.

Q. Did you take any further steps towards the organization of the Association? A. Yes.

Q. Were you one of the incorporators?

A. Yes, sir.

(Testimony of Howard Sharrar.)

Q. Did you circulate any membership cards for the Association, among the employees?

A. Yes, sir.

Q. When did you do this?

A. Well, I give some of the employees some of the cards at the bowling alley, some I gave during the smoking period and I gave different ones a group of cards. I think I give to five or six fellows.

Q. Did you circulate any in the plant?

A. In the plant? No, sir.

Trial Examiner Myers: Except during smoking hours? [132]

The Witness: That wasn't in the plant at that time, it was outside.

Q. (By Mr. Harrington): What is the smoking period you refer to?

A. The smoking period in the morning is 10:30, I believe, and 2:30 in the afternoon.

Q. Is that a rest period?

Trial Examiner Myers: You have to stay on the premises, don't you?

The Witness: They don't have to, no sir.

Trial Examiner Myers: They can go outside the gates?

The Witness: Yes.

Trial Examiner Myers: Where did you go with these cards, outside the gates?

The Witness: No, sir.

Trial Examiner Myers: Inside the gates?

The Witness: Yes, sir.

(Testimony of Howard Sharrar.)

Trial Examiner Myers: But not in the plant itself?

The Witness: Not in the plant itself.

Trial Examiner Myers: It was on the grounds?

The Witness: Yes.

Q. (By Mr. Harrington): Did you attend the first meeting of the Association?

A. Yes.

Q. Who was chairman of that meeting? [133]

A. Bob Stevens was acting chairman.

Q. How did he come to be elected as acting chairman?

A. Mr. Gilbert and I talked it over and decided to appoint him in—with Mr. Williams.

Q. Did you have anything else to do with his selection? A. Anything else, other than that?

Q. Yes. A. No, sir.

Q. Are you still a member of the Association?

A. No, sir.

Q. When did you cease being a member?

A. About two months ago.

Q. Are you the Howard Sharrar who is one of the incorporators of the Association?

A. Yes, sir.

Q. Did you hold any other office in the Association?

A. Yes, I was one of the members of the Board of Directors.

Q. Over what period of time?

A. For about two weeks.

Q. What two weeks was that?

(Testimony of Howard Sharrar.)

A. That was in the last two months, it was about—let's see——

Trial Examiner Myers: The last two months you were a member of the Association, is that what you mean?

The Witness: Yes, sir. [134]

Q. (By Mr. Harrington): Could you place more closely what that month would be? You said you have not been a member for two months. Was it immediately prior to that that you were a member of the Board of Directors?

A. Yes, it was before I was promoted as plant superintendent. I resigned about a week before that.

Q. Did you ever take the place of Floyd Drake?

A. Yes, sir.

Q. What was his position?

A. His position was night leadman, or foreman, you would call it. He was never listed as a foreman. He was directly under Ira Hutchins, the toolroom foreman.

Q. What happened? How did you come to take his place? A. He was sick.

Q. When was this? A. I do not remember.

Q. Can you place it by the month, what month it was in? A. No.

Q. Or what time of the year?

A. It was along, I think, sometime in April.

Trial Examiner Myers: This year?

The Witness: Of '43, yes, sir.

(Testimony of Howard Sharrar.)

Q. (By Mr. Harrington) Do you know what Floyd Drake's duties were?

A. His duties were giving the men their jobs and assisting [135] them on them, and telling them what to do on the jobs, as to how to do it.

Trial Examiner Myers: Toolroom?

The Witness: Toolroom, yes, sir.

Q. (By Mr. Harrington) Were there any lead-man under him? A. No, sir.

Q. At the time you held this position, were there any leadmen under him? A. No, sir.

Q. How many men were under you during those two weeks?

A. I think there were about eight.

Trial Examiner Myers: You say he was away for two weeks, or one week?

The Witness: Mr. Drake?

Trial Examiner Myers: Yes.

The Witness: He was off a week.

Q. (By Mr. Harrington) What position do you have now in the plant, did you say?

A. Superintendent nights.

Trial Examiner Myers: Superintendent of the Plant No. 2?

Q. (By Mr. Harrington) Night superintendent? A. Yes.

Q. Do you have authority to hire and discharge?

A. I have no authority to hire, and I have no authority to discharge; it is only on recommendation to Mr. Burland. [136]

(Testimony of Howard Sharrar.)

Q. You have authority to make recommendations?  
A. That is right.

Trial Examiner Myers: Burland is over you, then?

The Witness: Burland is directly over me, yes, sir.

Trial Examiner Myers: Is he the man that is there during the day?

The Witness: He is there during the day.

Q. (By Mr. Harrington) Were you a member of the Association at the time you were appointed night superintendent?

A. No, sir, I had resigned a week before that.

Q. What were the circumstances of your resignation? Had anyone told you to resign?

A. No, sir.

Mr. Proctor: I object to that on the ground it is immaterial. It has no bearing on the issues here.

Trial Examiner Myers: The objection is overruled.

Q. (By Mr. Harrington) Had anything been said to you by anybody in the plant about resigning?

A. No one had said anything about resigning at all.

Trial Examiner Myers: Why did you resign?

The Witness: Well, I read the handwriting on the wall, so to speak; no one said anything at all.

Trial Examiner Myers: You mean you expected to be promoted to the job of night superintendent?

The Witness: That is right. [137]



(Testimony of Howard Sharrar.)

Trial Examiner Myers: There was some talk between you and somebody connected with the management; is that right?

The Witness: No, sir, not with the management. It was by a couple of ordinary workmen that were out on the floor that tipped me off. They thought it was well, that better things were in store if I resigned. I said, "All right. I will resign and play, and see if it is going to prove out." I did and it proved out as it had.

Q. (By Mr. Harrington) Who were these workmen? A. I don't remember.

Trial Examiner Myers: What is it?

The Witness: I don't remember who it was.

Trial Examiner Myers: Two workmen came around and told you if you got out of the Association you might be promoted?

The Witness: That is right.

Trial Examiner Myers: You don't know who that was?

The Witness: No, sir.

Q. (By Mr. Harrington) Do you recall what you said to them or what they said to you?

Mr. Proctor: I object to that, I can't see any basis for it.

Trial Examiner Myers: I will sustain the objection.

Mr. Proctor: I also move all that testimony be stricken.

Trial Examiner Myers: The motion is denied.

(Testimony of Howard Sharrar.)

Q. (By Mr. Harrington) Have any other officials of the Association been promoted?

A. No.

Q. Did you have anything to do with the negotiating of this contract (indicating), Board's Exhibit 6?

A. The only thing I know about the contract is that Mr. Proctor wrote up a form whereby we could look it over, the three of us, at the time of organizing. Then after the organization was accepted, then it was brought up as it has been mentioned before. I don't recall just exactly—I didn't play much of an active part in that at all.

Q. Do you know anything about this application for membership in the Association which is in this contract (indicating)?

A. Do I know anything about the application?

Q. Yes. How it came to be in this contract.

A. How it came to be in that book?

Q. Yes. A. No, sir.

Q. At the time these two employees spoke to you or gave you a tip about being promoted, was there any mention made of Article 18 of the constitution?

A. No, sir. I couldn't even tell you what it is, unless I read it.

Q. Was there any discussion with respect to that?

A. After I turned in my resignation? [139]

Q. No. When you were talking to these two employees? A. No, sir.

(Testimony of Howard Sharrar.)

Q. What was your position immediately before  
\*you were promoted to night superintendent?

A. Primary machine setup man for new machines. [140]

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ROBERT L. STEVENS,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name?

The Witness: Robert L. Stevens.

Trial Examiner Myers: Will you please spell your last name for the record?

The Witness: S-t-e-v-e-n-s.

Trial Examiner Myers: Where do you live?

The Witness: 912 East Glenoaks Boulevard, Glendale.

Trial Examiner Myers: You may be seated. You may proceed, Mr. Harrington.

Q. (By Mr. Harrington) Are you employed by Kinner Motors Corporation? A. Yes.

Q. How long have you been employed?

A. Since March 7, 1943. [144]

Q. What type of work did you perform when you first started working for the company?

A. Receiving clerk.

Q. Who was your immediate superior?

A. Joe Morrow.

(Testimony of Robert L. Stevens.)

Q. What is his title?

A. He is a receiving clerk, also.

Q. Did you continue to work as a clerk in the receiving department under Morrow?

A. Yes, sir.

Q. Have you been doing that work ever since?

A. Yes, sir.

Q. Did you ever take over Morrow's duties?

A. Yes, sir, I took over Morrow's duties on May 1, 1943.

Q. What happened to Morrow?

A. He went up as purchasing agent, front office.

Q. Was your salary increased when you took over his job? A. Yes, sir.

Q. Did you have any title then?

A. No, sir, still receiving clerk.

Q. Still receiving clerk, but you were performing his duties? A. That is right.

Q. (By Trial Examiner Myers) What did you start at, what salary? [145]

A. I started at 75 cents an hour.

Q. When you filled Morrow's job, what did you receive? A. 90 cents.

Q. Did you get any increases between those dates? A. Yes, sir, one 5 cent raise.

Q. That is 80 cents? A. That is right.

Q. First you started at 75 cents. When were you raised to 80 cents?

A. In about thirty days.

Q. And then some time around May 1st you got—— A. 90 cents.

(Testimony of Robert L. Stevens.)

Q. —90 cents? A. Yes.

Q. What are you getting now? A. \$1.00.

Q. Have you had any raises in between 90 cents and \$1.00? A. Yes, sir; 5 cents.

Q. When did you get that?

A. Got that when certain fellows in the receiving department put in a complaint as to their salaries.

Q. Everybody got an increase of 5 cents an hour? A. That is right.

Q. Where did you work before you went with the Kinner Motors?

A. Goodyear Tire and Rubber. [146]

Q. How long did you work there?

A. Seven months.

Q. What was your job there?

A. Accounts payable.

Q. A bookkeeping job? A. Yes, sir.

Q. Where did you work before you worked for Goodyear?

A. The County of Los Angeles, financial investigator.

Q. How long did you hold that job?

A. Three and a half years.

Q. And this Goodyear plant is right near Los Angeles?

A. It is at 6701 South Central.

Q. In Los Angeles? A. That is right.

Trial Examiner Myers: Go ahead, Mr. Harrington.

Q. (By Mr. Harrington) When you took over

(Testimony of Robert L. Stevens.)

Morrow's duties, were you then in charge of receiving?

A. Only as far as to seeing that the goods were properly received and shipped out.

Q. Did you supervise the work of any employees? A. Yes, sir.

Q. How many? A. Three.

Q. Are three employees all you have had under you since then? Are they still there? [147]

A. That is all.

Q. Have you ever had any more employees?

A. No, sir.

Q. Did you have anything to do with the Brand Street warehouse of the company?

A. Yes, sir.

Q. How many employees are working there?

A. Well, at the present time there is only one in charge, but that was only to—we had a cancellation, an Army cancellation order which had to be shipped over there for the Army to check. I was put in charge, to see that the raw materials and stocks were shipped to Brand Boulevard.

Q. And were the employees in that warehouse under your supervision at that time?

A. Only the mover.

Q. How many of them were there?

A. About three or four.

Q. That was in addition to the employees in the receiving department? A. That is right.

Q. Who is your immediate superior?

A. At that time Mr. George Blauvalt.



(Testimony of Robert L. Stevens.)

Q. What is his title?

A. He is parts manager.

Trial Examiner Myers: You said "at that time".  
What [148] time are you referring to?

The Witness: Just a month ago they had a shakeup.

Trial Examiner Myers: You say at that time.  
What time are you referring to?

The Witness: I am referring up until a month ago.

Trial Examiner Myers: From May 1st—

The Witness: No, from the time of April—let's see, March 7th until a month ago.

Q. (By Mr. Harrington) When did you first hear of the Kinner Motors Employees Association?

A. When Mr. Howard Sharrar and Mr. Jack Williams spoke to me about it.

Q. When was that?

A. That was one evening, I believe, at the bowling alley on Friday night when they met to bowl.

Q. And what conversation did they have with you about it?

A. Well, it seems as though somebody told them I had some ability to carry off a meeting, and they asked me to become a chairman for the first meeting.

Q. Was anything said about the A F of L?

A. I don't believe so.

Q. Did you have any further conversation with them before the first meeting?

A. Before the first meeting? Yes, I believe I did. Howard Sharrar, at lunch time. [149]

(Testimony of Robert L. Stevens.)

Q. What was that conversation?

A. In regard to the procedure of the first meeting.

Trial Examiner Myers: Did you ever belong to a labor organization?

The Witness: Yes, sir, AFL.

Trial Examiner Myers: That was at Goodyear?

The Witness: No, sir. I was in the foremen's club at Goodyear. They had a CIO in the shop and a foremen's club in the office force.

Trial Examiner Myers: Where did you belong to the A F of L?

The Witness: Right here locally. Let's see, Builders and Carpenters Union.

Trial Examiner Myers: When?

The Witness: Oh, about five or six years ago.

Trial Examiner Myers: They have a closed shop contract?

The Witness: No, sir.

Trial Examiner Myers: What is it?

The Witness: No, sir, they did not.

Q. (By Mr. Harrington) In this conversation with Howard Sharrar, that you have mentioned you had during the lunch period, was anything said about the A F of L?

A. I believe when he approached me I thought he was approaching me for A F of L and I think I told him I wasn't interested in joining any A F of L. [150]

Q. What did he say?

(Testimony of Robert L. Stevens.)

A. He told me it was not. It was the formation of an association among ourselves.

Q. Did he say why it was being formed?

A. No, sir.

Q. And I believe you stated then you acted as temporary chairman at the first meeting?

A. Yes.

Q. Were you chairman at the second meeting?

A. Yes, sir. I was appointed as chairman of that meeting, to continue until a president was elected.

Q. Who appointed you?

A. The appointment was made, I believe—it is in the books. I couldn't be sure right now. It is in the minutes of the meeting.

Q. At the first meeting were you appointed or elected?      A. Temporarily appointed.

Q. Appointed?

A. Yes, that is right, by the assembly.

Q. Do you know George Williams?

A. Yes, sir.

Trial Examiner Myers: George Williams?

Mr. Harrington: George Williams, yes.

Q. (By Mr. Harrington) What is his position in the plant?

A. I believe he is foreman of the inspectors, Plant 1. [151]

Mr. Williams: Sheet inspector.

The Witness: Sheet inspector, Plant 1.

Q. (By Mr. Harrington) Have you had any conversations with him about the Association?

(Testimony of Robert L. Stevens.)

A. Officially, no.

Q. Have you had any conversation with him?

A. Oh, yes. When the two men were running, the time we went to lunch and we spoke about it just offhand.

Q. When was that?

A. Oh, I should judge about three weeks or two before the meeting.

Trial Examiner Myers: What do you mean "when the two men were running"?

The Witness: Two men from his department were running for secretary and treasurer.

Trial Examiner Myers: Who were they?

The Witness: Earnie Colburne and Jack Elliott.

Q. (By Mr. Harrington) Where did you have this conversation with Mr. Williams?

A. At a restaurant on Colorado and Central.

Q. Did you have any conversation with him in the plant about it?

A. Not referring to that, no. We might have spoke about it, but it had no bearing.

Q. Mr. Stevens, did you sign an affidavit in this case in [152] September?

A. Yes, sir, with reservation. And I believe when the attorney called me up on that I told him not to interpret that statement that I went to Mr. George Williams about the two men involved.

Q. Well, did you have a conversation with him in the plant?

A. I said I might have, yes.

(Testimony of Robert L. Stevens.)

Trial Examiner Myers: With Williams?

The Witness: Yes, sir, going for coffee or a smoke, or something like that, something might have been said.

Q. (By Mr. Harrington) Did you have a conversation with him at his desk?

A. Not that I know of.

Q. About these two men?

A. Not with reference to this.

Trial Examiner Myers: What conversation did you have at lunch?

The Witness: Discussing the two men running whether he was, oh, —I couldn't state exactly the words that were said.

Trial Examiner Myers: Of course not. I don't expect you to.

The Witness: No.

Trial Examiner Myers: Tell us what you remember of it.

The Witness: I told him that the two men from his [153] plant were running; if he had any objections.

Trial Examiner Myers: Running for what?

The Witness: Running for secretary and treasurer.

Trial Examiner Myers: Did you tell him that?

The Witness: Did I tell him what?

Trial Examiner Myers: Yes. Tell us what you remember telling him.

The Witness: That is what I remember telling

(Testimony of Robert L. Stevens.)

him. He says, "Why, no, it nothing to me". That is all it was. In other words, just like it was a pretty good battle between the two men.

Trial Examiner Myers: Why did you do that?

The Witness: No reason, just like I would talk to you about something, the weather or something else.

Trial Examiner Myers: Go ahead, Mr. Harrington.

Q. (By Mr. Harrington) Did you have this conversation at Mr. Williams' desk?

A. I don't think so. [154]

Q. (By Mr. Harrington) Now, where was the conversation with George Williams?

A. The conversation with George Williams was still on the way to coffee. And I believe I called up the attorney, when he talked to me about this, and I told him that I objected to that, and I believe I called up Mr. Ogren in regard to that.

Q. This statement, "I talked with him at his desk", is not [157] correct?

A. That is not correct. And I did not go to him to talk to him,

Trial Examiner Myers: Is there anything else in that statement that is not correct?

The Witness: No, sir, that is all.

Trial Examiner Myers: Would you say the statement took place in the lunchroom and did not take place at Mr. Williams' desk?

The Witness: The first one, yes, sir. And the other one on the way to coffee.



(Testimony of Robert L. Stevens.)

Q. (By Mr. Harrington) Was there anyone else present? A. No, sir.

Q. When those statements were made?

A. No, sir.

Q. Are you acquainted with Mr. Sigafoose?

A. Yes, sir.

Mr. Collins: What is that name?

Mr. Harrington: Sigafoose.

Q. (By Mr. Harrington) Was he a member of the Association? A. Yes.

Q. Was he an official in the Association?

A. Yes, sir.

Q. Is he still an official in the Association?

A. No, sir. [158]

Q. What official position did he hold in the Association? A. Director.

Q. What happened to him as a director? Did he resign or did his term expire?

A. He resigned; he found another job.

Trial Examiner Myers: He is not at the plant any more?

The Witness: No.

Trial Examiner Myers: He had the job as director until he quit working for the Kinner Motors?

The Witness: Yes. And he handed in his resignation.

Q. (By Mr. Harrington) Did you have any discussion with anybody at the plant as to someone to take Sigafoose's place?

(Testimony of Robert L. Stevens.)

A. I believe I did. I believe I talked to Cliff Malamphi.

Q. What is Mr. Malamphi's position?

A. I think he is a leadman.

Q. Who is he under?

A. Under Ross Nichols.

Trial Examiner Myers: What plant is that?

The Witness: Plant 1.

Trial Examiner Myers: What department?

The Witness: In the toolroom.

Q. (By Mr. Harrington) What does Malamphi do, if you know?

A. I don't know really.

Q. You don't know what his duties are?

A. No. [159]

Q. What was your conversation with him?

A. I just told him that if he had any recommendations, or anything, to go around to the men and see if there is a man who could take Mr. Sigafosse's place as director.

Trial Examiner Myers: Whom is this?

The Witness: This was upon Mr. Sigafosse's resignation.

Trial Examiner Myers: When?

The Witness: I couldn't tell you the date.

Trial Examiner Myers: Don't you know what month?

The Witness: June or July.

Trial Examiner Myers: June or July, this year?

The Witness: Yes.

(Testimony of Robert L. Stevens.)

Trial Examiner Myers: What was your position at that time?

The Witness: I was president.

Trial Examiner Myers: What was your position at that time?

The Witness: I was president.

Trial Examiner Myers: At the plant?

The Witness: At the plant?

Trial Examiner Myers: Yes.

The Witness: Receiving clerk.

Q. (By Mr. Harrington) Do you have any authority to transfer employees?

A. To transfer employees? [160]

Q. Yes. A. No.

Q. Or to recommend their transfer?

A. No.

Q. Do you make any recommendations with respect to employees under you? A. No, sir.

Q. I believe you were elected president of the Association? A. Yes, sir.

Q. Are you still president of the Association?

A. No, sir; terminated the 30th of last month.

Q. Was that when the term of office expired?

A. That is right.

Trial Examiner Myers: Are you still a member of the Association?

The Witness: Yes, sir.

Q. (By Mr. Harrington) As president of the Association did you have anything to do with the drawing up of the contract between the company and the Association?

(Testimony of Robert L. Stevens.)

A. None other than the other board of director member. When it was presented to us by the attorney we went over it with him.

Q. At the time the contract was entered into and signed between the company and the Association, did you make any arrangements as to having it printed or distributed, or any- [161] thing of that nature? A. Phrase that again. please.

Q. After the contract was entered into and was signed—— A. Yes.

Q. ——as president of the Association did you have any conversations or any talks with any members of the management with respect to how the contract was to be distributed to the employees?

A. You mean the agreement distributed?

Q. Yes.

A. Yes, when we received the first 200. It was in a meeting of September and we distributed those at the meeting. The people that did not receive it at the meeting, it was distributed by the personnel department through the timekeeper.

Q. Looking at Board's Exhibit 6, which is the agreement between the company and the Association, do you know how the application for membership in the Association happened to become a part of this contract?

A. Yes, through the recommendation of the board of directors in the meeting between the representatives of the company and the Association we decided to copy from other associations, the same forms.

(Testimony of Robert L. Stevens.)

Q. Is there anything in the contract——

A. I believe there in the contract. [162]

Q. Will you point out anything in the contract that has anything to do with the application for membership?

Mr. Proctor: I think the contract speaks for itself.

Trial Examiner Myers: I will sustain the objection.

Q. (By Mr. Harrington) Did I understand you to say that it was through discussion with the company?

A. With Mr. Sullivan.

Q. Who is Mr. Sullivan?

A. He is the personnel director.

Q. What was your discussion with Mr. Sullivan?

A. As to the type to use, the same as the other associations have; we had about five or six copies of different firms.

Q. And did Mr. Sullivan agree it would be put in a booklet, in Board Exhibit 6?

A. Yes.

Q. And be distributed to employees?

A. Yes.

Mr. Harrington: I ask to have marked as Board's Exhibit 7 a paper entitled "Notice to Night Shift Employees", signed by Robert L. Stevens as president.

(Thereupon, the document referred to was marked for identification as Board's Exhibit No. 7.)

Q. Sometime in June?           A. Yes.

Q. Was it before or after the contract?

A. It was after the contract.

Trial Examiner Myers: You say they allowed you to post that. Who is "they"?

The Witness: The Kinner Motors Company.

Q. (By Mr. Harrington) That would be after June 16th?           A. That is right.

Q. Can you place it any more definitely than that?

A. No, I am sure I couldn't. I am sorry.

Mr. Harrington: I offer Board's Exhibit 7, for identification, in evidence. [164]

(Thereupon, the documents heretofore marked for identification as Board's Exhibit Nos. 7 and 8 were received in evidence.)

(Testimony of Robert L. Stevens.)

Q. (By Mr. Harrington) Is that your signature (indicating)?           A. Yes, sir. [163]

Q. On Board's Exhibit 7, for identification?

A. Yes, sir.

Q. Was this posted in the plant?

A. Yes, sir.

Q. Who posted it?           A. I believe I did.

Q. And where in the plant did you post it?

A. Temporary bulletin boards they allowed us to use, two of them.

Q. When was it posted?

A. The date, you mean?

Q. Yes.           A. Sometime in June.



(Testimony of Robert L. Stevens.)

BOARD'S EXHIBIT No. 7

NOTICE TO NIGHT SHIFT EMPLOYEES

Please be advised that commencing immediately a bonus for night shift employees of five cents an hour will be paid by Kinner Motor Company, Inc., in accordance with the terms of the contract recently executed by and between Kinner Motor Company, Inc., and Kinner Motors Employees Association, Inc.

Please be further advised that this bonus has been approved by the War Labor Board.

KINNER MOTORS EMPLOY-  
EES ASSOCIATION. INC.

By ROBT. L. STEVENS  
President

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BOARD'S EXHIBIT No. 8

July 15, 1943

1. Correcting misstatements that are being made in the plant with reference to present wage raises, we wish to advise that no Union or other organization was responsible for these raises and further had no part at all in obtaining them. According to law no organization can obtain raises for employees without the company's consent.

2. According to law the company has to make all applications. The applications must be made to the War Labor Board and no increases can be

(Testimony of Robert L. Stevens.)

granted without the approval of the War Labor Board. As all of you are aware we made application for general increases on December 10, 1942. The delay in obtaining consent to raises has been occasioned by not receiving the approval of the War Labor Board. The company recently obtained partial approval from the War Labor Board, effective July 5, 1943.

3. Raises are being granted wherever allowed by the War Labor Board as fast as same can be processed, and we are using every effort to obtain as rapidly as possible the raises we have requested. This does not mean that everyone will receive a raise, inasmuch as several applications to the War Labor Board have been denied due to no fault of the company. In this connection the company is contesting same in the employees' behalf.

4. Once more, contrary to information which is being circulated in this plant, No Organization Had Anything To Do With Granting Of The Present Increases.

KINNER MOTORS, INC.

EARL HERRING,

President.

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Q. (By Mr. Harrington) When did you have this conference or discussion with Mr. Sullivan, the personnel director, when you insisted the membership cards be in the contract?

(Testimony of Robert L. Stevens.)

A. Prior to the printing of this agreement.

[182]

Q. Was that before or after——

A. That was after the contract and agreement was signed.

Q. After June 16th?           A. Yes.

Q. After the contract was entered into?

A. Yes.

Q. When was the contract printed and distributed?           A. Sometime in September.

Q. And it was before those two dates you had this conference with Mr. Sullivan?           A. Yes.

Q. Have any signed cards been returned, any signed membership cards?           A. Yes, sir. [183]

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### CHRISTINE JAGOE,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name?

The Witness: Christine Jagoe.

Trial Examiner Myers: Spell your name for the record.

The Witness: C-h-r-i-s-t-i-n-e J-a-g-o-e.

Trial Examiner Myers: Is it Miss or Mrs.?

The Witness: Mrs. [194]

Trial Examiner Myers: Where do you live, Mrs. Jagoe?

(Testimony of Christine Jagoe.)

The Witness: 2309 Florencita in Montrose.

Trial Examiner Myers: You may be seated.

You may proceed, Mr. Harrington.

Q. (By Mr. Harrington) Are you employed by Kinner Motors?

A. Yes, I am.

Q. What position do you hold?

A. Stenographic secretary to Mr. Sullivan.

Q. Who is Mr. Sullivan?

A. Personnel director at Kinner.

Q. What work do you do?

A. Why, I do the preliminary interviewing and I answer the telephone and handle the Selective Service work.

Q. When you say "preliminary interviewing", interviewing of whom? A. Of applicants.

Q. Applicants for employment?

A. Yes, sir.

Q. Do you handle Mr. Sullivan's correspondence?

A. Some of it. There are three stenographers in the office.

Q. Do the other stenographers handle his correspondence, also?

A. Do the others handle his correspondence?

Q. Yes. A. Yes. [195]

Q. As much as you do?

A. I believe one girl does more of his correspondence than I.

Q. Do you have anything to do with replacement schedules?

(Testimony of Christine Jagoe.)

A. Yes, sir, I make up all the replacement schedules and Manning Tables.

Q. What are the Manning Tables?

A. That is a part of the Selective Service plan, War Manpower Commission.

Q. Do you have anything else to do with Selective Service?

A. I write the majority of the appeal letters, and I contact the local boards for the employees and arrange for their physical and their induction.

Q. Do you have anything to do with work in connection with the War Manpower Commission?

A. Only in having my schedules approved.

Q. After you interview applicants for employment, what do you do about the interview?

A. If Mr. Sullivan is in the office I take the application in to Mr. Sullivan and have the applicant come in and talk to Mr. Sullivan. If Mr. Sullivan shouldn't be in the office I contact the department head who will tell me whether they have use for the man or not.

Q. Do you make any recommendations with respect to whether or not applicants should be employed? [196]

A. Only if on the telephone they might say, "Do you think she looks all right in the way of a stenographer?"

And I will say, "Yes" or "No".

They don't go on my word completely. I don't do any hiring at all.

(Testimony of Christine Jagoe.)

Q. Do you do any confidential work for Mr. Sullivan?

A. I don't open his own confidential mail. He opens all his own confidential mail.

Trial Examiner Myers: Do you handle all mail that is not confidential?

The Witness: Yes.

Trial Examiner Myers: What is Mr. Sullivan's first name?

The Witness: Emmett.

Q. (By Mr. Harrington) What are his initials?

A. E. J.

Q. What is your salary?

A. 84 cents an hour.

Q. Do you get paid by the hour or month?

A. We have just transferred over all office employees to hourly rates; it amounts to \$145.00 a month.

Q. When did you transfer to hourly rates?

A. We are still in the process of changing records, but I think they started it some time in July. I couldn't say for sure. [197]

Q. And before that were you on a monthly salary?

A. Yes, sir.

Q. Are you acquainted with the Kinner Motors Employees Association?

A. Yes, sir.

Q. When did you first become acquainted with it?

A. I first became acquainted with the Association the day I signed my membership card.

Q. When was that?



(Testimony of Christine Jagoe.)

A. That was the Thursday before the Friday of the first meeting.

Trial Examiner Myers: What month was that?

The Witness: Well, the first meeting, I believe, was in March.

Mr. Harrington: I believe we have stipulated as to when the first meeting was, Mr. Examiner.

The Witness: I don't know.

Mr. Harrington: That was on April 16th; isn't that correct, Mr. Proctor?

The Witness: That is ocrrect. [198]

(Thereupon, the document heretofore marked for identification as Board's Exhibit 10, was received in evidence.)

### BOARD'S EXHIBIT No. 10

I, the undersigned, hereby designate and appoint Kinner Motors Employees' Association, Inc., as my exclusive bargaining agent under and by virtue of the terms of the National Labor Relations Act.

Dated this 15 day of April, 1943.

CHRISTINE A. JAGOE.

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Q. (By Mr. Harrington) I believe I asked you, Mrs. Jagoe, if you attended the first meeting on April 16th? A. Yes.

Trial Examiner Myers: On April what?

Mr. Harrington: April 16, 1943.

Q. (By Mr. Harrington) Did you participate in that meeting? A. I took the minutes down.

(Testimony of Christine Jagoe.)

Q. How did you come to take the minutes?

A. Rose Minor of the personnel office asked me to take them.

Trial Examiner Myers: Who?

The Witness: Rose Minor.

Trial Examiner Myers: How do you spell that name?

The Witness: R-o-s-e M-i-n-o-r.

Q. (By Mr. Harrington) Was she a member of the Association? A. Yes.

Trial Examiner Myers: What is her job in the personnel office?

The Witness: Stenographic.

Q. (By Mr. Harrington) Are you classified as assistant to [200] the personnel director?

A. No, sir, I am not.

Q. Did you attend the next meeting of the Association? A. No, I did not.

Q. What work does Rose Minor do?

A. She handles mostly the employee insurance and employee records.

Q. Do you have access to the personnel files of the employees? A. Yes.

Q. Does Rose Minor have access to those files?

A. Everyone in the personnel office has access to them.

Q. Do you know who took over the work of secretary of the Association at the second meeting?

A. Who took over the work?

Q. Yes. A. Rose.

(Testimony of Christine Jagoe.)

Q. Rose? A. Yes.

Q. Rose Minor? A. Yes. [201]

Q. Tell us the routine, will you please, when a man comes up and applies for a job? Tell us all about it, will you please?

A. After he has been accepted by the department head or by the personnel director we make out a hiring form.

Q. Tell us what you do.

A. We make out the hiring form, which gives the employee's name and rate of pay and his occupation. Then they are instructed to come back the morning——

Q. You say "we do this and we do that". I am trying to find out who does it and what you have to do with it.

A. I say "we" because there are three girls doing the same work.

Q. I want to know what you do.

A. All right. I make out the hiring form and I instruct them to come back the morning they are to start to work.

Q. What else?

A. On the morning they start to work? Is that what you are interested in?

Q. I don't know what happens. Suppose I came there for a job and you interviewed me?

A. Yes.

Q. Will you go on from there so I would know just what [210] happens at the plant?

A. All right. After you have made out your

(Testimony of Christine Jagoe.)

application and have been interviewed and have been accepted for employment, you come back to my desk.

Q. Who sends me back to your desk?

A. The personnel director. I make out a hiring form on you and I instruct you to come back the morning you start to work. On the morning you start to work you come into the office and I fingerprint you. I have you sign an identification card. I give you a bond slip, if you want to buy bonds.

Q. That is, war bonds?

A. That is the war bonds. I have you sign four reference letters, to send to former employers and to designate a personal reference. I have you fill out a transportation slip, should you be interested in getting transportation to the plant. I give you a timeclock number, a job card and time card. And I explain the employee group insurance to you, which is voluntary. I give you some pamphlets from the nurse's office on vitamins and health. I give you a pamphlet on the credit union and we also have, in the same employee folder, a copy of the Employee's Association manual.

Q. What?

A. Of the Employee's Association—little brown book.

Q. Is that what you mean (indicating)?

A. That is it. [211]

Q. This is Board's Exhibit 6. Do you give that to the applicant? A. That is right.

Q. Then what happens? Go ahead.

(Testimony of Christine Jagoe.)

A. Following that the employee is taken into the plant, after he has been given his employee badge.

Q. By whom?

A. Not by myself, but by one of the other girls in the office. She takes him to the timekeeper's office, shows him how to punch their job card and time card; then to their superior on the job.

Q. You give this applicant a lot of papers and a lot of forms and some pamphlets; is that right?

A. That is right.

Q. Do you talk this over with these people?

A. Only the group insurance needs explanation.

Q. Is that all?           A. That is all.

Q. And what about this Board's Exhibit 6? What do you say there?

A. We don't open the conversation in any way because that, too, is voluntary, on the employee's part. We don't ask them to join or not to join.

Q. Do you call his attention to the fact there is an application blank in here? [212]

A. I don't know. I don't even open the book.

Q. You just hand him the book; is that right.

A. That is right. [213]

## EARNEST M. COLBURN,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

## Direct Examination

Trial Examiner Myers: What is your name?

The Witness: Earnest M. Colburn.

Trial Examiner Myers: Spell your last name for the record.

The Witness: C-o-l-b-u-r-n.

Trial Examiner Myers: Where do you live, Mr. Colburn?

The Witness: 626 North Kenwood, Glendale.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Harrington.

Q. (By Mr. Harrington) Are you employed by Kinner Motors? A. I am.

Q. How long have you been so employed?

A. Since January 21, 1942.

Q. What is your position at the company?

A. Up to about six weeks ago I was shop clerk, and clerk of inspection, I should say.

Q. What were your duties as shop clerk?

A. Well, the material control would telephone me to put certain orders in the shop. I would make out the necessary papers, deliver them to the raw stores and they, in turn, would [220] take the raw material to the shop.

Q. Who is your immediate superior?

A. George Williams.

Q. Did you act as secretary to George Williams?



(Testimony of Earnest M. Colburn.)

A. I do.

Q. What is George Williams' position?

A. Chief inspector.

Q. As secretary for Mr. Williams, what do you do?

A. Well, I write all the letters in connection with inspection work, interoffice mostly, and I make out material inspection reports as the material passes from either the vendor, outside vendors, or the shop, through the inspection department to finished stores.

Q. Do you do any confidential work?

A. Some.

Q. For Mr. Williams? A. Some.

Q. Does Mr. Williams have authority to hire and fire?

A. He has authority to hire, but I don't know as he has any authority—he may have authority to fire. I really never discussed it with him.

Q. In your work at the plant, do you have any contact with the shop employees? A. I do.

Q. In what way? [221]

A. Up to six weeks ago it was necessary for me to often straighten out paper work tangle that we had in the shop. For instance, a man on a machine might be using the wrong job number, or something of that kind, and I would have to go out there and straighten him out.

Q. Was your contact with the employees in the plant a direct contact? A. A direct contact.

Q. Did you contact them through Mr. Williams?

(Testimony of Earnest M. Colburn.)

A. Well, Mr. Williams—I did that work. He did not have to give me any instructions. I knew as the stuff went through, and maybe they would telephone me from the office that somebody was not using the right job number. I never discussed it with him. I just went out and took care of it.

Q. Are you a member of the Kinner Motors Employees Association?      A. I am.

Q. Do you hold any position in that Association?

A. I do not.

Q. Did you?      A. I did.

Q. What was it, please?

A. Secretary and treasurer.

Q. When did you hold that position?

A. I started September 26th and finished November 30th. [222]

Trial Examiner Myers: This year?

The Witness: This year.

Q. (By Mr. Harrington) What were your duties as secretary-treasurer?

A. I took the minutes of all the meetings.

Trial Examiner Myers: November 30th?

The Witness: November 30th, of this year.

Trial Examiner Myers: Two weeks, ago, approximately?

The Witness: Yes.

Trial Examiner Myers: You say you took the minutes of all the meetings?

The Witness: Yes.

Trial Examiner Myers: How many meetings were there?

(Testimony of Earnest M. Colburn.)

The Witness: There was always one a month, and we had one directors' meeting.

Trial Examiner Myers: What was the last meeting you took the minutes of?

The Witness: November 30th.

Q. (By Mr. Harrington) Did you sign an authorization card in the Association?

A. You mean application card?

Q. Yes. A. Yes.

Q. Who presented it to you?

A. Jack Williams, as I recall, passed those around during [223] the smoking period one day. I believe it was in March or thereabouts. And he left them on our desks and collected them during the lunch period. There was nothing——

Q. Where did Mr. Williams contact you?

A. I was at my desk. He said nothing, as I recall. He merely came through and left them on the desks and tables, and it was up to our own discretion as to whether we signed them or not.

Trial Examiner Myers: How do you know it was left up to your discretion? Did he say anything?

The Witness: He didn't say anything, no. All you had to do was read the slip; that was all there was to it.

Trial Examiner Myers: He just left some cards on the tables?

The Witness: Yes; said he would collect them later.

Q. (By Mr. Harrington) Did anybody discuss

(Testimony of Earnest M. Colburn.)

with you the position of secretary-treasurer in the Association before you assumed it?

A. I had the opportunity possibly to do that work for some time, but I had not been especially interested in it. I have a great many outside interests but I accepted it in September, September 26th.

Q. (By Trial Examiner Myers) Are you still working for the company? A. I am. [224]

Q. You said something before about that up to six weeks ago you held a certain position. What do you mean by that?

A. They have since taken the shop work from me and they have put a new department in called production control, and they have taken over all that work.

Q. What do you do now?

A. I merely do the inspection work.

Q. What do you mean "inspection work"?

A. Well, all the clerical work in connection with the inspection department.

Q. Is that what you mean by clerk of inspection? A. Yes, clerk of inspection.

Q. That is what you call yourself?

A. Yes, that is what I am now.

Q. Did you have anything to do with the inspection prior to six weeks ago?

A. Yes, I was doing that work in conjunction with the shop clerical work six weeks ago.

Q. Now your work is all confined to inspection?

A. To inspection.

Q. Who does the shop work?

(Testimony of Earnest M. Colburn.)

A. Production control.

Q. Any particular person?

A. They have a head of production control. There are a couple of young ladies, and one of the men in the shop called [225] Elmer Beard. I just couldn't be specific about it.

Trial Examiner Myers: All right. Go ahead, Mr. Harrington.

Mr. Harrington: Surely.

Q. (By Mr. Harrington) Do you know Robert Stevens? A. I do.

Q. Is he president of the Association?

A. He was at that time.

Q. At that time. Did you have any conversation with Mr. Stevens about assuming the position of secretary-treasurer?

A. Very little. Mr. Stevens never asked me to assume that position. Several members in the shop had asked me, due to the fact I have done stenographic work, and can do that work. Of course, naturally, it is rather hard to get a lot of shop people who can do that work and do it properly.

Q. You say Mr. Stevens had very little to say to you. What did he have to say?

A. Mr. Stevens knew nothing about it until I had been approached. In fact, I told Mr. Stevens I had been approached to accept the position.

Q. What did Mr. Stevens say?

A. Mr. Stevens said it was perfectly all right as far as he was concerned, if I wanted to handle it.

(Testimony of Earnest M. Colburn.)

Q. When was that conversation with Mr. Stevens?

A. It was prior to September 26. I couldn't say exactly. [226]

Q. Was anyone else present? A. No.

Q. Where was this conversation held?

A. Well, it was during the lunch period one day. I don't know just when; in the shop.

Q. Did Mr. Stevens ever talk to George Williams about it, in your presence?

A. I believe he did, yes.

Q. When was that?

A. Well, as I recall, due to the nature of my work, it was very heavy at that time, Mr. Stevens knew that and he came into the office—the small office where we were—it was about during the lunch period and the three of us—during the rest period—got up and walked over to the canteen, and we discussed it on the way over there.

Trial Examiner Myers: Who were the three?

The Witness: Mr. Stevens, Mr. George Williams and myself.

Q. (By Mr. Harrington) What was the discussion?

A. He asked Mr. George Williams—he did not want to accept—he did not want to upset any—he knew I was very busy, would he care if I accepted a position of that kind, would he have any objections to it.

Q. What did Mr. Williams say?

A. He said, "Why, why, surely, no." [227]



(Testimony of Earnest M. Colburn.)

He said, "If Colburn wants to do it, that is up to him".

Q. Did Mr. Stevens say what he would do if Mr. Williams had any objections to it?

A. No.

Q. Was there anything further said in the conversation?

A. No, —well, I might say that Mr. Williams did turn to me, and he said, "It is all right, Colburn, but I *don't* you to do any work during the regular working hours of the shop. Any work you do should be done outside of working hours."

And he says, "I want that to be specific." He was very specific about it.

Q. Where did you work before you came to Kinner Motors Company?

A. Well, I was personnel manager at Gladding McBean.

Q. Are you familiar with the membership of the Association?      A. Well, I think so, yes.

Q. Is Kenneth Freese a member of the Association?      A. No, he is not.

Q. Is Raymond L. Wildman a member of the Association?

A. He was, but he is not now; he resigned.

Q. Over what period of time was he a member?

A. Well, I think he resigned possibly about two months ago.

Trial Examiner Myers: Are you still a member of the Association?

The Witness: I am. [228]

(Testimony of Earnest M. Colburn.)

Q. (By Mr. Harrington) What was his position in the plant?

A. I don't really know. I couldn't say. The way it came up, I asked him about his dues, and he said that he didn't care to continue in the Association any more. I said, "Fine, if that is the way you feel about it."

Q. Is Joseph S. Wilson a member?

A. I don't recall him.

Q. Is Homer Watters a member?

A. I believe he is.

Q. What is Watters' position?

A. As far as I know he just runs one of the automatics in the shop.

Q. What constitutes membership in the Association? A. Beg pardon?

Q. What constitutes membership in the Association?

Mr. Collins: I object to that as calling for a conclusion.

Trial Examiner Myers: I will sustain the objection.

Mr. Collins: It would be hearsay.

Mr. Harrington: No further questions.

Trial Examiner Myers: Mr. Collins? [229]

JAMES M. DAVIS,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name?

The Witness: James M. Davis. D-a-v-i-s.

Trial Examiner Myers: Where do you live, Mr. Davis?

The Witness: 327 West Cerritos, Glendale.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Harrington.

Q. (By Mr. Harrington): Are you employed by Kinner Motors?

A. Yes.

Q. How long have you been employed there?

A. Since October, 1941.

Q. On what shift?

A. On the second shift; that is, from 5:30 to 3:30.

Q. Have you been on that shift all the time?

A. No.

Q. Have you been on that shift continuously over any period of time?

A. About a year or a little better.

Trial Examiner Myers: You say 5:30 to 3:30?

The Witness: Yes.

Trial Examiner Myers: That is, 5:30 in the evening to [236] 3:30 in the morning?

The Witness: At the present time; it has been 4:30 to 2:30 before.

(Testimony of James M. Davis.)

Q. (By Mr. Harrington): Mr. Davis, have you seen any Association membership cards circulated in the plant? A. Yes.

Q. By whom? A. By B. C. Johnson.

Trial Examiner Myers: B. C. Johnson?

The Witness: Yes, sir.

Q. (By Mr. Harrington): What is Mr. Johnson's position in the plant?

A. He is the night foreman in the machine shop.

Trial Examiner Myers: When were these cards circulated? You have not fixed the time.

Mr. Harrington: I was coming to that, Mr. Examiner.

Q. (By Mr. Harrington): When?

A. It was sometime in April of this year.

Q. Was it during working hours?

A. Yes.

Q. Did Mr. Johnson give a card to you?

A. Yes, sir.

Q. Did he say anything to you at that time?

A. He came in and said, "Boys, we really got something here." [237]

He says, "Here is an application for Kinner Motors Employees Association."

Trial Examiner Myers: Who was present when he said that, Mr. Harrington?

Mr. Harrington: Beg pardon?

Trial Examiner Myers: Who was present when Mr. Johnson is supposed to have said that?

Q. (By Mr. Harrington): Who was present?

A. Mr. Louis Gilpin and Mr. John Clinton.

(Testimony of James M. Davis.)

Trial Examiner Myers: And yourself?

The Witness: Yes, sir.

Q. (By Mr. Harrington): Do you know Mr. Roy Walker?

A. Yes, sir.

Q. What does he do?

A. He is the assistant night foreman.

Q. Have you ever heard him talk about the Association?

A. Yes, sir.

Q. Where?

A. In the shop.

Q. When?

A. I believe it was some time in June. That is the nearest I can get it.

Q. Of what year?

A. This year.

Q. What time of day? [238]

A. Between 9:30 and 10:00 o'clock.

Trial Examiner Myers: At night?

The Witness: Yes, sir.

Q. (By Mr. Harrington): Was that during working hours?

A. Yes, sir.

Q. Who was present?

A. All of the night crew.

Trial Examiner Myers: What man are you referring to? I didn't get the name.

Mr. Harrington: Roy Walker.

Q. (By Mr. Harrington): I believe you have identified Mr. Walker.

Trial Examiner Myers: I am just asking for his name. I didn't hear the name. Go ahead.

Q. (By Mr. Harrington): What did Mr. Walker say at that time?

A. He asked the employees to consider an em-

(Testimony of James M. Davis.)

ployees' organization.

Q. Well, can you give us, in words, what he said, as closely as you can recall it?

A. He says—he got up and said, “While you fellows are all together,” he said, “I would like to make you a little speech.”

He said, “We are going to have a union here,” and he says, “I suggest to all employees that we form one of our own, that the A. F. of L. is dominated by Lockheed in the lodge we are to accept.” And he advised that we all join the [239] Kinner Motors Employees Association.

Q. Did Mr. Walker say anything else?

A. I don't recall any specific part of his speech, outside of that.

Q. How many men were present at that speech?

A. Around twenty, I would say.

Q. Were they employees on the night shift?

A. Yes, sir.

Q. Was Mr. Johnson present?

A. Yes, sir.

Trial Examiner Myers: Is that B. C. Johnson?

The Witness: Yes, sir.

Trial Examiner Myers: Who did you say Mr. Walker was?

The Witness: He was the assistant night foreman.

Trial Examiner Myers: Assistant to Mr. B. C. Johnson?

The Witness: Yes, sir.

Trial Examiner Myers: You say this took place some time in June, 1943?



(Testimony of James M. Davis.)

The Witness: Yes, sir.

Q. (By Mr. Harrington): Was an Association election ever held in the plant?

A. Yes, sir.

Q. When was it?

Mr. Collins: I didn't hear that question.

Trial Examiner Myers: Will the reporter please read [240] the last question and answer?

(The record was read.)

Mr. Proctor: I will object to that question on the ground there is no proper foundation laid.

Trial Examiner Myers: Overruled.

Q. (By Mr. Harrington): When was it?

A. I don't recall the exact date. I think it was sometime in October—no, not October, either. It was further back than that. I don't remember the exact date.

Trial Examiner Myers: Do you know what month?

The Witness: It was some time after he made the speech.

Trial Examiner Myers: Who made the speech?

The Witness: This Roy Walker.

Q. (By Mr. Harrington): Do you know what season of the year it was?

A. It must have been August, sometime in August.

Q. Will you describe what happened at that election?

A. Mr. Oren Caderet came into the toolroom——

Q. What is Mr. Caderet's position in the plant?

A. At that time he was mill operator?

(Testimony of James M. Davis.)

Q. Does he still hold that position?

A. He is a foreman in the plant, too, at the present time.

Q. Proceed.

A. He came into the toolroom and told the boys in the toolroom and myself that he had been asked to hold an election [241] for shop steward.

Q. Did he say who had asked him?

A. He said, "They asked me." He didn't say who "they" was.

Q. Proceed.

A. He said, "You boys fill out a slip, and there is a box located at the time clock"—and he pointed with his finger—"and you will drop your votes in that box for the man you want."

Q. Was there a box at the time clock?

A. Yes.

Q. Then what happened?

A. I told him that I wasn't a member of the organization. And he says, "That doesn't make any difference; vote, anyhow."

Q. Was the vote taken then?

A. I didn't vote.

Q. Was a vote taken?                   A. Yes, sir.

Q. What happened then?

A. That was all until later in the night.

Q. What is it?

A. Later in the night the votes were counted.

Q. Who counted the votes?

A. Roy Walker and Oren Caderet.

Q. Where did they count them? [242]

A. By Mr. Caderet's machine.

(Testimony of James M. Davis.)

Q. Was any announcement made as to the result?      A. Yes, sir.

Q. Who by?

A. By Mr. Caderet and Mr. Walker.

Q. What did they say?

A. Mr. Walker came first and told me that Mr. Caderet had won by a few votes over he, himself.

Trial Examiner Myers: Who is Roy Walker?

The Witness: He is the assistant night foreman.

Trial Examiner Myers: He was at that time?

The Witness: Yes, sir.

Q. (By Mr. Harrington): Are you acquainted with Mr. E. J. Sullivan, personnel director?

A. Yes.

Q. Did you ever hear him make a speech about the Association?      A. Yes.

Q. When?      A. About a month ago.

Q. Where was that?

A. A month or six weeks, I wouldn't know.

Q. Where was this speech made?

A. It was made in the shop in Plant 2.

Q. Who was present? [243]

A. All of the employees and Mr. Howard Sharrar, the superintendent, night superintendent.

Q. Were the employees called together?

A. Yes, sir.

Q. By whom?

A. By Mr. Howard Sharrar. They were first notified by bulletins from the interoffice communications, something of that nature.

Mr. Proctor: Howard Sharrar or Howard Shore?

(Testimony of James M. Davis.)

The Witness: Sharrar.

Mr. Proctor: The gentleman that was on the stand here the other day?

The Witness: Yes, sir.

Q. (By Mr. Harrington): Were they memos distributed to the employees?

A. Yes.

Q. By whom?

A. By the foremen of the different departments.

Q. And at what time was this meeting held, at what time of day?

A. I don't remember just exactly what time it was.

Q. Was it during working hours?

A. I think it was around 8:00 o'clock; I will say around 8:00 o'clock.

Trial Examiner Myers: At night? [244]

The Witness: Yes.

Q. (By Mr. Harrington): Would that be during working hours? A. Yes.

Q. What did Mr. Sullivan say?

A. He said that he was going to make a little speech, that there had been some rumors going around the plant and he wanted to have a little better understanding.

Q. What else did he say?

A. He said that—well, he mentioned the Employees Association. He said he didn't have any right to solicit their membership, but it was organized for the employees and he thought it was best for them to join. It would be a closer cooperation between the shop and the management, and that

(Testimony of James M. Davis.)

anyone having any grievances to take them to the union, that he didn't want them to come to him with it. And anyone starting rumors any more or about wages between the—between two employees or about the hours, arguments over the hours, would be considered an act of sabotage, and dealt with accordingly.

Q. Did he say anything further about the Association?

A. He said that the Association had been approved by the War Labor Board, and that that would be used as the bible.

Q. Did he say anything about the agreement between management and the Association?

A. Yes, sir. He said he had some new books of the contract, and he laid them on a bench there besides the microphone, and [245] said everyone that didn't have one to come up and get it.

Q. Was anything further said?

A. That is all I recall. [246]

#### Redirect Examination

Q. (By Mr. Harrington): Was Mr. Walker in the tool room at the time the election was held. that you have testified about?

A. He was later in the night, after the votes were counted he came in and announced that Mr. Cadaret had won by a few votes.

Q. Did Mr. Walker participate in the election?

A. He helped count the votes.

Q. Did he vote himself?

A. I don't know about that.

Q. What does B. C. Johnson do in the plant?

(Testimony of James M. Davis.)

A. He looks after the—all the machines and the tool crib, and the production.

Q. Does Mr. Johnson give you orders?

A. Well, to some extent. The tool room is separate from the production.

Q. Well, when you say “to some extent,” what do you mean?

A. Well, if you leave the plant before the working hours are over or something like that, you have to get a permit [266] from him to pass the gate.

Q. I see. Do you have to turn any work slips in to Mr. Johnson?      A. No.

Q. Does he assign you your work?

A. No.

Q. What does Mr. Walker do in the plant?

A. He is the assistant to Johnson.

Q. What does he do?

A. When Mr. Johnson isn't there he takes over, takes his—charge of the shop.

Q. Does Mr. Walker assign you your work?

A. No.

Q. What would happen if you ran out of work?

Mr. Collins: I object to that.

Trial Examiner Myers: I will sustain the objection.

Q. (By Mr. Harrington): Have you ever run out of work?

A. No.

Q. When Mr. Glenn Gilmore told you if you didn't join the Association you would be sorry, did he say why you would be sorry?



(Testimony of James M. Davis.)

A. He said, "They told me to give you two chances." He didn't say who "they" were.

He said, "They told me to give you two chances to join."

Q. Did he say anything else? [267]

A. He said that I would be sorry if I didn't join. [268]

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GEORGE ORRILL

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name?

The Witness: George Orrill.

Trial Examiner Myers: Will you please spell your name for the record?

The Witness: O-r-r-i-l-l.

Trial Examiner Myers: Where do you live, Mr. Orrill?

The Witness: 12028 Martha Street, North Hollywood.

Trial Examiner Myers: You may be seated.

You may proceed, Mr. Harrington.

Q. (By Mr. Harrington): Are you employed by Kinner Motors?

A. Yes, sir.

Q. For how long have you been employed?

A. About four and a half years.

Q. What do you do in the plant?

(Testimony of George Orrill.)

A. Machinist.

Q. Do you have any employees under your supervision?

A. Well, more or less a leadman.

Q. When were you a leadman?

A. I have been for the last couple of years.

Q. How many employees have you under your supervision? [277]

A. Three or four.

Q. Who is your immediate superior?

A. Mr. Davey.

Trial Examiner Myers: Who?

The Witness: Mr. Davey.

Trial Examiner Myers: What is his first name?

The Witness: Ed Davey.

Trial Examiner Myers: D-a-v-e-y; is that right?

The Witness: Yes, sir.

Q. (By Mr. Harrington): Do you know Kenneth Freese?

A. Yes, I do.

Q. Is he an employee of the company?

A. Yes.

Q. What does he do? A. He is boss.

Q. What title does he have?

A. They never officially give him any title.

Q. How many men are under him?

A. About twenty.

Q. Have you ever taken his place in his absence?

A. Four months when he was sick.

Q. When was this?

A. Around the first of September.

(Testimony of George Orrill.)

Q. And how many men were under you at that time? A. Approximately the same. [278]

Mr. Collins: When was that? I didn't catch that date.

The Witness: September.

Mr. Collins: Of this year?

The Witness: For three months.

Q. (By Mr. Harrington): As leadman, what do you do?

A. I will set up jobs and check them and see they are running right.

Q. Do you have anything to do with transferring employees? A. No, sir.

Q. Have you ever recommended a transfer?

A. No, sir.

Q. Have you ever recommended any wage increases for employees under you? A. No.

Q. Do you give employees orders under you?

A. What I receive from the boss, that is all.

Q. Do you do any manual labor?

Mr. Proctor: I object.

Trial Examiner Myers: From what boss?

The Witness: Mr. Davey.

Mr. Proctor: If your Honor please, this line of questioning is all leading and suggestive right straight through. I haven't raised the point prior hereto——

Trial Examiner Myers: Don't lead the witness; I will sustain the objection. [179]

Q. (By Mr. Harrington): Are you a member of the Kinner Motors Employees Association?

(Testimony of George Orrill.)

A. I was.

Q. When did you join it?

A. When it first started.

Q. And when did you cease being a member?

A. Around October.

Trial Examiner Myers: This year?

The Witness: Yes, sir.

Trial Examiner Myers: Why did you stop?

The Witness: Well, I believed they weren't getting any place, and I just dropped out.

Q. (By Mr. Harrington): Was there any other reason why you stopped?

A. No, sir.

Q. Who was the first person who discussed the Association with you?

A. Mr. Jack Williams.

Q. Where was that? A. In the shop.

Q. When?

A. During the working day one day.

Q. Was anyone else present? A. No, sir.

Q. What did Mr. Williams say to you? [280]

A. He just said they were forming a company union and wanted to know if I wanted to join.

Q. What did you say?

A. I said I would like to join.

Q. Was there anything else said in that conversation? A. That is all.

Q. Did he give you any membership cards?

A. He gave me a few, to pass out to the ones around there at that end of the shop.

(Testimony of George Orrill.)

Q. Did you pass them out?

A. Yes, I passed a few of them out.

Trial Examiner Myers: To whom?

The Witness: Oh, to a couple of men in the shop.

Trial Examiner Myers: Men in your group?

The Witness: Yes, sir.

Q. (By Mr. Harrington) How many of them did you pass out? A. About three of them.

Q. When you passed them out to those employees, did you have any conversation with them?

A. I told them what it was, and if they wanted to join it was O.K. and if not it was O.K.

Q. What did you tell them it was?

A. Company union.

Trial Examiner Myers: Did they sign them?

The Witness: Yes. [281]

Trial Examiner Myers: Three of them?

The Witness: Yes.

Trial Examiner Myers: Did they give you the cards?

The Witness: They gave me the cards and I gave them back to Jack Williams.

Q. (By Mr. Harrington) Have you had any conversations with Kenneth Freese about the Association? A. No, sir.

Q. Did you sign an affidavit in this case, Mr. Orrill?

Trial Examiner Myers: Do you know what an affidavit is?

The Witness: I think I—I did over there in the personnel office.

(Testimony of George Orrill.)

Q. (By Mr. Harrington) Is this your signature (indicating)? A. Yes, sir.

Q. Is this you initial (indicating)?

Mr. Proctor: Counsel, I wonder if we might see that.

The Witness: Yes, sir.

Mr. Harrington: I was going to show it to counsel as soon as I had it identified.

Trial Examiner Myers: Show it to counsel.

Q. (By Mr. Harrington) I ask you, Mr. Orrill, to read this paragraph, to refresh your memory.

A. Yes.

Q. Having read that paragraph, Mr. Orrill, will you state [282] what your position in the plant is?

A. Well, I never did have an official title, if I was foreman or not. Mr. Davey asked me to take Kenny's place, that is all there was to it, until he got back.

Q. To take whose place?

A. Kenny Freese's place.

Q. Kenny Freese's place? A. Yes.

Q. (By Trial Examiner Myers) When you did take his place, what did you do?

A. I checked the different operations around, and moved the employees on different jobs as the work seemed fit.

Q. What is it?

A. Moved the employees to certain jobs that needed it, their production work.

Q. What else? A. That is about all I had.



(Testimony of George Orrill.)

Q. Were any men discharged while you were there in Freeze's place?      A. No, sir.

Q. Were any new men brought in——

A. There was one or——

Q. —while Freeze was away?

A. There were one or two came in.

Q. What did you do with these men? [283]

A. I put them to work on different machines.

Q. Who sent the men to you?

A. Mr. Davey.

Q. He sent the men to you?      A. Yes, sir.

Q. Did you tell Davey you needed more men?

A. No, sir.

Q. How did he happen to send two men to you?  
Did he tell you why?

A. He didn't tell me why.

Q. Then what happened? The two men came there and what happened?

A. I put them to work on the machines.

Q. Are they still on the same machines you put them on?      A. They changed around.

Q. Did you change them?      A. Yes.

Q. You changed the men from one job to another while you were in Mr. Freeze's place?

A. Yes, when the work ran out.

Q. Did anybody get a wage increase while you were working in Freeze's place?

A. Not that I know of.

Q. Did you recommend anybody for a wage increase?      A. No, sir. [284]

Trial Examiner Myers: All right. Go ahead.

(Testimony of George Orrill.)

Q. (By Mr. Harrington) Will you read this sentence here (indicating)?

A. (Witness complies.)

Q. When you were working as leadman how many men were under you?

Mr. Proctor: I will object to that question as assuming facts not in evidence.

Trial Examiner Myers: I will sustain the objection.

Mr. Harrington: I believe the witness has already testified——

Trial Examiner Myers: Go ahead.

Mr. Harrington: —he had men under him.

Q. (By Mr. Harrington) How many men were under you?

A. At the time I took over, you mean?

Q. No. Before you took Mr. Freese's place.

A. There were about ten or twelve men. There are not as many working in the shop now.

Q. At that time there were ten or twelve men?

A. Yes.

Q. Did you give orders to those men?

A. Yes. [285]

Q. What did you do when you were a leadman?

A. I set up jobs and checked them at the same time.

Q. Is that the time you had ten or twelve men in the group? A. Yes.

Q. Is that right? A. Yes.

Q. And how much of your time was spent as a leadman and how much as an operator?

(Testimony of George Orrill.)

A. Most of my time is charged by operating machines, very little leadman.

Q. You went and took Freese's place for three months?      A. Yes.

Q. During all that time you were still a member of the Association-      A. No, sir. [287]

Q. When did you quit?

A. I dropped out before I took Freese's place.

Q. You dropped out before you took Freeze's place?      A. Yes.

Q. How long were you a member of the Association?      A. About three months.

Q. Did you sign a check-off card?      A. No.

Q. They never checked off your dues?

A. They asked me if I wanted to pay up, but I said "No." I said I wanted to drop out and that is all there was to it.

Q. You never signed up?      A. Yes.

Q. How long did you pay dues?

A. About three months.

Q. What is your job now?

A. I am a machinist, a machine operator.

Q. You are no longer a leadman?

A. I am back on my original job now.

Q. What is that?      A. Running a machine.

Mr. Proctor: I will move all testimony after the time he severed his association with Kinner Motors Employees Association be stricken from the record. It has absolutely no bearing on any issue in this case, nothing he could have [288] done at that time

(Testimony of George Orrill.)

would serve as a prejudice to anyone's rights herein.

Trial Examiner Myers: The motion is denied.

Go ahead, Mr. Harrington. Are there any further questions?

Q. (By Mr. Harrington) Mr. Orrill, I ask you to read this sentence (indicating).

A. (Witness complies.)

Q. Now, when did you resign from the Association? A. Around August sometime.

Q. Was it before you substituted for Mr. Freese?

A. Yes.

Q. What did you mean in this statement when you state:

"I am a member of the Kinner Motors Employees Association, Inc. \* \* \* At the present time I am substituting for Kenneth Freese, who is the regular foreman and who is on sick leave."

Were you a member at the time you made this affidavit, dated September 16, 1943?

A. That is right.

Trial Examiner Myers: Did you resign in writing?

The Witness: No.

Trial Examiner Myers: Whom did you tell you were no longer a member?

The Witness: To the secretary of the Association. [289]

Trial Examiner Myers: When did you tell him that?

The Witness: Around August.

(Testimony of George Orrill.)

Trial Examiner Myers: Who was the secretary?

The Witness: Mr. Colburn.

Trial Examiner Myers: He was the secretary in August, 1943?

The Witness: Yes.

Trial Examiner Myers: Well, just to refresh your recollection, Mr. Colburn was on the stand this morning and he testified that he didn't become secretary and treasurer of the Association until September 26, 1943.

Now, with that date in mind, can you tell us when you resigned from the Association?

The Witness: He asked me whether I wanted to pay up—it may not have been him, another man. I can't think who it was that was taking the money then. Lynn Brown I think it was; he was the treasurer.

Trial Examiner Myers: You didn't tell Colburn in August, did you?

The Witness: Colburn asked me during—while Kenny Freese was gone, if I wanted to pay up, and I said, "No."

Trial Examiner Myers: That is the time you told him you didn't want anything to do with the Association?

The Witness: Yes, sir.

Trial Examiner Myers: All right. That is the first [290] time you told anybody connected with the Association that you didn't want anything to do with the Association?

The Witness: Well, I told Lynn Brown when he

(Testimony of George Orrill.)

asked me, after I dropped out, if I wanted to pay up, and I said, "No."

Trial Examiner Myers: When did you have your conversation with Brown?

The Witness: That was in August.

Trial Examiner Myers: When did you drop out?

The Witness: Around in August sometime.

Trial Examiner Myers: What do you mean by "dropping out"?

The Witness: I just didn't pay any dues any more, and asked to get out.

Trial Examiner Myers: Whom did you ask?

The Witness: Lynn Brown.

Trial Examiner Myers: What did you say to him?

The Witness: He asked me if I wanted to pay the dues, and I told him I did not want to pay the dues any more, that I didn't want to belong anymore.

Trial Examiner Myers: Then what happened?

The Witness: He said. "O.K." and walked out.

Trial Examiner Myers: What did you say to Colburn?

The Witness: I said the same thing. He wanted to collect the dues, and I told him the same thing.

Trial Examiner Myers: That is the only way you got out [291] of the Association?

The Witness: Yes, sir.

Q. (By Mr. Harrington) What do you mean on September 26th, Mr. Orrill, when you stated, "I am



(Testimony of George Orrill.)

a member of the Kinner Motors Employees Association''?

A. Well, I was still a member. I wasn't paying dues, and I asked to get out.

Q. Have you discussed the Association with Kenneth Freese? A. No, sir.

Q. Will you read this paragraph (indicating)?

A. (Witness complies.)

Q. Does that refresh your recollection? Does that refresh your recollection as to whether or not you discussed the Association with Mr. Freese?

A. Yes.

Q. And did you?

A. I did not talk about the union.

Q. What did you say to him?

A. Well, Mr. Freese and I have been more or less friends for several years, and that is how we talked. We didn't talk about the Association at all.

Q. What do you mean by this statement: "I don't believe Freese passed out any cards for the Association; I have talked with Freese about it, and I believe he is for it, but he has not said so to me in so many words." [292]

Will you explain what you meant by that statement?

A. Being around Mr. Freese I thought he was for it, in my own idea. He never come out and made any statements for it.

Q. What did you mean when you said, "I have

(Testimony of George Orrill.)

talked to him about it"? What did you say when you talked to him about it?

A. I told him I was signed up, and that is the only thing I said, we talked about.

Q. What did he say?

A. He didn't say it was good or bad. He didn't say anything about it.

Q. What led you to believe he was for it?

A. Just his words and actions when I was around.

Q. What were those words?

A. Well, I don't recall exactly.

Q. As closely as you can?

A. He thought it would be better to have a company union.

Q. Did he say that? A. Yes.

Q. When? Can you place the date of the conversation?

A. Over at his house one time. I don't remember when.

Q. Was anyone else present? A. No.

Trial Examiner Myers: Do you know what month?

The Witness: Around the first—around May sometime. [293]

Trial Examiner Myers: This year?

The Witness: Yes.

Q. (By Mr. Harrington) Did you have any other discussions with him about the Association?

A. That is all.

Q. Just that one discussion? A. Yes.

ALBERT GARDINER

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name?

The Witness: Albert Gardiner.

Trial Examiner Myers: Will you please spell your name for the record?

The Witness: A-l-b-e-r-t G-a-r-d-i-n-e-r.

Trial Examiner Myers: Where do you live, Mr. Gardiner?

The Witness: 1382 East Windsor Road, Glendale.

Trial Trial Examiner Myers: You may be seated. You may proceed, Mr. Harrington.

Q. (By Mr. Harrington) Are you employed by Kinner Motors? A. Yes.

Q. How long have you been employed by Kinner Motors? [304]

A. Since I was employed—I was employed from 1928 to 1937. I came back in 1938, to the present time.

Q. In March of 1943 what work did you do?

A. Running a crank pin machine.

Q. Were you doing any other work, any other type of work?

A. Well, any kind of lathe work.

Q. Did you have any employees under you at that time?

(Testimony of Albert Gardiner.)

A. Well, I don't know as you call them under me. I kind of supervised the crank shaft line.

Q. How many employees worked on that line?

A. Anywhere—sometimes six, sometimes eight, ten.

Q. When you say you supervised the crank shaft line, what do you mean?

A. I only just see the line is kept going.

Trial Examiner Myers: Tell us what you do during the entire shift of any day, a normal day.

The Witness: Well, some days I don't have to look after the men at all, they are pretty well organized themselves. But if one of them happens to run out of a job, I tell them what the next operation is and the likes of that.

Q. (By Mr. Harrington) Do you assign work to the men? A. Yes, sir.

Q. Do you keep the records of the time worked by the men? A. No, sir.

Q. Do you keep records of any kind? [305]

A. No.

Q. How long have you supervised the crank shaft line? A. More or less since '38.

Q. Is that up to the present time?

A. Yes.

Q. Do you make any recommendations as to wage increases? A. No, sir.

Q. Do you make any recommendations as to the work of the men under you?

A. No, not—no one else but myself; that is all.

(Testimony of Albert Gardiner.)

I recommend the jobs to the men, and tell them how I would like to have it done, and the likes of that. But so far as anyone else is concerned, no.

Q. What I meant was, do you make any recommendations to anyone above you as to the men under you?      A. No, sir.

Q. Who is your immediate superior?

A. Mr. Davey.

Q. Mr. Ed Davey?      A. Yes, sir.

Q. Are you a member of the Kinner Motors Employees Association?      A. Yes, sir.

Q. When did you become a member of it?

A. Well, when it was organized. [306]

Q. (By Trial Examiner Myers) Who asked you to join?      A. Jack Williams.

Q. Where did he ask you?      A. In the shop.

Q. What time of day?

A. What time, did you say?

Q. Yes.

A. I don't know, sometime during the day.

Q. During working hours?      A. Yes, sir.

Q. What did he say when he asked you?

A. Well, just asked if I didn't think having an Association of our own—he heard rumors the A.F. of L. wanted to get in there, and he thought us old-timers had been there so long and hadn't had any trouble or anything else, the company seemed to use us all right, why not have one of our own.

Q. Then what happened?

A. He said they were forming an Association. And he said, "Do you want to belong?" And I said, "Yes."

(Testimony of Albert Gardiner.)

Q. What happened then?

A. I signed an application to become a member.

Q. Did he give you any other cards?

A. Yes.

Q. What did he tell you when he gave you the cards?

A. He said, "See if you can get rid of these."

[307]

Q. Did you get rid of them?

A. I got rid of about ten.

Q. How did you get rid of them?

A. Some of them heard I had them and they come over and asked me about them when I was working, and I handed them to them. They would take them away and sign them and bring them back and hand them back to me.

Q. When you say, "I got rid of them" you mean you got employees to sign up? A. Yes.

Q. With the Association? A. Yes.

Q. To sign these application cards?

A. Yes.

Q. (By Mr. Harrington) At the time Jack Williams asked you to join the Association, did he ask you to take any official position in it?

A. What official position—

Mr. Proctor: I object to that on the ground counsel is leading these witnesses.

Trial Examiner Myers: I will sustain the objection.

Don't lead the witness.

Q. (By Mr. Harrington) Did Jack Williams



(Testimony of Albert Gardiner.)

say anything else to you at the time when he asked you to join the Association?      A. No.

Q. Have you exhausted your recollection as to what he said [308] at that time?

A. Yes, I think that is all he said.

Mr. Harrington: Having exhausted the witness' recollection, I think the question is proper.

Trial Examiner Myers: Why don't you propound it then?

Q. (By Mr. Harrington) Did he ask you to serve as one of the incorporators?

Q. (By Mr. Harrington) What did you say?

A. I told him I would be willing. That is the last I heard of it. [309]

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## OREN HENRY CADARET

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

### Direct Examination

Trial Examiner Myers: What is your name?

The Witness: Oren Henry Cadaret.

Trial Examiner Myers: Will you spell your entire name for the record?

The Witness: O-r-e-n H-e-n-r-y C-a-d-a-r-e-t.

Trial Examiner Myers: Where do you live, Mr. Cadaret?

The Witness: 1202 South Glendale Avenue, Glendale.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Harrington.

(Testimony of Oren Henry Cadaret.)

Q. (By Mr. Harrington) Are you employed by Kinner Motors, [313] Mr. Cadaret? A. Yes.

Q. What type of work do you do?

A. I am a leadman in the milling machines, plant 2.

Q. How many employees are under your supervision? A. Oh, about 18.

Q. How long have you been a leadman?

A. Since the first of October.

Q. What are your duties?

A. Oh, see that the machines are kept running, set a job—jobs have to be set up.

Q. Do you give orders to the men under you?

A. Well, yes, subject to my superior.

Q. Do you make any recommendations to your superior with respect to the men under you?

A. Well, I haven't. I don't know how to answer that. I haven't so far.

Q. Who is your superior?

A. Howard Sharrar.

Q. What is his position?

A. Superintendent.

Q. How long has he been superintendent?

A. How long has he been in?

Q. Yes.

A. I couldn't give you the dates, you know, on that. I [314] guess around the same time I have been there.

Q. That would be in October?

A. A little after that.

Q. Do you make out any time cards for the men

(Testimony of Oren Henry Cadaret.)

under you?           A. No.

Q. Do you make out any forms of any kind?

A. No.

Q. Do you make any recommendations as to wage increases?           A. I haven't.

Q. (By Trial Examiner Myers) How long have you been in this job you are talking about?

A. Since the first of October.

Q. This year?           A. Yes.

Q. (By Mr. Harrington) Are you a member of the Kinner Motors Employees Association?

A. Yes, sir.

Q. When did you join it?

A. Well, I can't give you dates. It was—when it first started.

Q. Did you ever solicit anybody to join the Association?

A. I passed slips around at night for them to either sign, if they wanted to, or if they didn't want to.

Q. Was that during working hours?

A. It was. [315]

Q. Who gave you the slips?

A. Jim Brown.

Q. What does Jim Brown do?

A. Jim is a leadman on days now; at that time he wasn't.

Q. What did he do at that time?

A. He was operating machines on a day shift.

Q. What shift are you on, Mr. Cadaret?

A. I am on the night shift.

(Testimony of Oren Henry Cadaret.)

Q. Have you been on the night shift all the time?      A. Night shift all the time, yes.

Q. Did you participate in any election held by the Association in the plant or by members of the Association?

Mr. Proctor: I object to that on the ground there is no proper foundation laid.

Trial Examiner Myers: What do you mean "no proper foundation"?

Mr. Proctor: He ought to ask—you have to have some dates and where and when, and so forth.

Mr. Harrington: I was coming to that.

Trial Examiner Myers: He will bring that out, I imagine.

Mr. Harrington: Yes, I was coming to that.

Trial Examiner Myers: I will overrule the objection. If he doesn't fix the time I will entertain a motion to strike. [316]

The Witness: Let's have that again, please.

Trial Examiner Myers: Will the Reporter please read the question to the witness.

(Question read.)

The Witness: It wasn't by the Association. It was to elect a shop steward, to represent the night men.

Q. (By Mr. Harrington): When was this election held?

A. I can't give you any dates, because I am no good at it.

Q. Can you place the month or the time of year?

A. We could say it was in the same year the thing started, last year.

(Testimony of Oren Henry Cadaret.)

Trial Examiner Myers: It started this year; didn't it?

The Witness: Or this year. As far as dates and everything, it was right after we started the organization; right after I joined.

Q. (By Mr. Harrington): What part did you take in the election?

A. I just passed the slips around. I didn't want to run for it, but it was up to the men themselves to elect whoever they wanted. I think there were three names on it, I believe. They could vote for anyone they wanted to.

Q. Well, how did the question of electing a steward come up?

A. Just amongst ourselves.

Q. Among whom? [317]

A. Amongst the men, night men. They wanted somebody, you know, to go to the meetings and report back what was going on. Otherwise, they wouldn't have known what was going on.

Q. And what was to be the function of this steward?

A. That was all: I just answered it. Just to report back what was going on at the meetings.

Q. The steward would attend the meetings; is that correct? A. Yes.

Q. Did you participate in the election?

A. Did I vote?

Mr. Harrington: Strike that, please.

Q. (By Mr. Harrington): Did you talk to the fellows on the night shift about the election, before it was held?

(Testimony of Oren Henry Cadaret.)

A. Oh, no, no; there was nothing to do.

Q. There was what?

A. There was nothing like that, just pass the slips around and they put down who they wanted to represent them.

Q. Before the slips were passed around, what was done?      A. Nothing.

Q. Were the men told what they were to vote for?      A. No.

Trial Examiner Myers: What is it?

The Witness: Did I understand you to say, "who to vote for"?

Q. (By Mr. Harrington): No. Were they told what the [318] election was about?

A. At the time the slips were handed to them.

Q. Who told them that?      A. I did.

Q. What did you tell them?

A. To vote for a representative, whoever they wanted.

Q. Then was a vote taken?      A. Yes.

Q. How was the vote taken?

A. There was a little box put there and they were to drop it in the box, and that was all there was to it.

Q. Who put the box there?

A. I believe I did.

Trial Examiner Myers: Where was the box put?

The Witness: Why, near the timeclock on the little table.

Q. (By Mr. Harrington): Who counted the votes?



(Testimony of Oren Henry Cadaret.)

A. Well, if I remember right, there were two or three. I think Wallace was one, and a fellow by the name of Les, and I was right there myself.

Q. When was the vote taken? Was it during working hours?

A. Yes. Well, they were thrown in. It was counted, I believe it was either during the smoking period or during lunch when they were counted.

Q. Have you attended meetings? [319]

A. A couple.

Q. Since then? A. A couple of them.

Q. A couple of them? A. Yes.

Q. Were those meetings held during your working hours? A. All during working hours, yes.

Q. Did you lay off of work to go to the meetings?

Mr. Proctor: I object to that on the ground it is leading the witness again.

Trial Examiner Myers: I will sustain the objection.

Q. (By Mr. Harrington): When did you attend those meetings?

A. Whenever they were held, and whatever day they were held on; at night.

Q. And that was during your working hours; wasn't it? A. Yes.

Mr. Proctor: I object to that on the ground it is leading the witness again.

Trial Examiner Myers: I will sustain the objection.

(Testimony of Orin Henry Cadaret.)

Q. (By Mr. Harrington): At what time were the meetings held?

A. Supposed to be called at eight o'clock.

Q. At night? A. At night.

Q. And what are your working hours? [320]

Trial Examiner Myers: Not when they were supposed to be called. When did you attend the meeting?

The Witness: At night.

Trial Examiner Myers: About what hour?

The Witness: Eight o'clock.

Q. (By Mr. Harrington): What are your working hours?

A. They were at that time from 4:30 to 2:30.

Trial Examiner Myers: 4:30 in the afternoon to 2:30 in the morning?

The Witness: Yes, sir.

Q. (By Mr. Harrington): When you attended those meetings, did you lay off work?

A. I went over there and come back to work.

Q. Did your pay run while you were attending the meetings?

A. I didn't punch my clock out.

Q. Were you excused by anybody to attend the meetings? A. No. [321]

Q. How long did the meetings last? How long did each meeting last? A. An hour.

Q. An hour? A. Yes.

Q. After the meeting was over, did you come back to work? A. Yes.

Q. Where were the meetings held?

A. At the American Legion Hall. I can't tell

(Testimony of Oren Henry Cadaret.)

you the street.

Trial Examiner Myers: In Glendale?

The Witness: In Glendale, yes.

Q. (By Mr. Harrington): How far is that from the plant?

A. About a 7 or 8 minute ride.

Q. Since the Association has been formed, have you passed out any application cards to employees?

A. Application cards?

Q. Yes. A. Yes.

Q. When?

A. Well, I passed them out here about a week ago, some.

Q. Where did you pass them out?

A. In the shop.

Q. At what time?

A. I couldn't say. It was at night. [322]

Q. Was it during working hours?

A. Yes, during smoke period.

Q. How many did you pass out?

A. Oh, 15, 16, something like that.

Trial Examiner Myers: To whom did you pass them out?

The Witness: To the employees.

Q. (By Mr. Harrington) Can you name any of the employees? A. Not offhand, no.

Q. What position are you now holding in the plant? A. What is it?

Q. What is your position in the plant at the present time?

A. Leadman, milling machines at nights. [323]

## ROY CONNOR WALKER

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

## Direct Examination

Trial Examiner Myers: What is your name?

The Witness. Roy Connor Walker.

Trial Examiner Myers: Will you please spell your last name for the record?

The Witness: W-a-l-k-e-r.

Trial Examiner Myers: Where do you live?

The Witness: In Van Nuys, at 6931 Long Ridge Avenue.

Trial Examiner Myers: You may be seated.

You may proceed, Mr. Harrington.

Q. (By Mr. Harrington) Are you employed by Kinner Motors? A. Yes, sir.

Q. How long have you been employed by Kinner Motors?

A. Well, the last time I commenced to work for them I believe was in 1939.

Q. What do you do in the plant?

A. Machine operator. [326]

Q. Who is your immediate superior?

A. Mr. Johnson.

Q. What is his first name? A. Brian.

Q. Does he have an initial?

A. B. C., Brian C. Johnson.

Q. What is his position?

A. He is the night foreman.

Q. When Johnson is off work, who takes his place? A. I do.

(Testimony of Roy Connor Walker.)

Q. How many days a week does the plant work?

A. Now?

Q. Yes. A. It works six days a week.

Q. Has it always worked six days a week?

A. No, sir.

Q. What other number of days a week have they worked?

A. They have worked five and they have worked seven.

Q. When did it work seven?

A. It has been quite some time ago. As near as I can place it is seems to be around the first of this year or last year that they changed. I can't set any exact date as to when it did change.

Trial Examiner Myers: They changed from seven to what?

The Witness: To six. [327]

Q. (By Mr. Harrington) How long was it on seven days?

A. Well, I don't know just exactly how long it was on seven days. It was on seven days for quite awhile. As to the exact amount of time, I don't recall that.

Trial Examiner Myers: Was it on for a year or so?

The Witness: I don't believe it was on for a year.

Q. (By Mr. Harrington) When the plant worked seven days a week, did Mr. Johnson work seven days?

(Testimony of Roy Connor Walker.)

A. Yes, he worked seven days at first, and then they changed things a little.

Q. When was the change?

A. Well, it seems to me like the change was back towards the first—well, maybe not back to the first of the year, but some time ago. They made the change, persons couldn't work seven days straight in a row.

Trial Examiner Myers: Let's get some time here before you go any farther.

Q. (By Mr. Harrington) Can you place the time when that occurred by the month?

A. I couldn't place it exactly, no, sir. It seems like, though, it was back close to the first of the year.

Q. Of this year? A. Yes, sir.

Q. (By Trial Examiner Myers) Now, what did they do around the first of the year? [328]

A. You mean when they made the change?

Q. I don't know what they did. I am trying to find that out from you.

A. They stopped the working of seven days straight by anyone, and we had to take one day off a week.

Q. How long did that last?

A. That just lasted until just recently.

Q. Would you say within a month or so?

A. Within, I should say, two months, three months, something like that.

Q. Since the first of the year up to about two months ago no one could work seven days straight in any one week; is that right?



(Testimony of Roy Connor Walker.)

A. Yes, something like that.

Trial Examiner Myers: All right.

Q. (By Mr. Harrington) During this period of time, that is, from the first of the year up to two months ago, did the plant operate seven days a week?

A. Yes, sir.

Mr. Proctor: If your Honor please, I don't know what the materiality of all of this has to do with this case; for that reason I object to any further questioning along this line.

Trial Examiner Myers: I will overrule the objection. If he don't connect it up, I will entertain a motion to strike. [329]

Q. (By Mr. Harrington) During this period of time, from the first of the year to two months ago, who took Johnson's place on his day off?

A. I did.

Q. Johnson took one day a week off; is that right?

A. Yes, sir.

Trial Examiner Myers: You say you took Johnson's place. What do you mean you took his place, as foreman?

The Witness: I looked after the jobs, saw that everybody had something to do. And if they had any trouble to help them out or if they run out of work, found another job for them.

Q. (By Mr. Harrington) Do you make any recommendations about the men under you to Mr. Johnson?

A. No, sir.

Q. How many men are there in that department?

A. Now?

(Testimony of Roy Connor Walker.)

Q. Well, over the space of a year has it changed?

A. Well, it has been—I would say, for the size of the crew, it got up to almost 25, I think, at one time. And it has dropped back now to where there are less than 10, I believe.

Q. When was it 25?

A. It was 25 about a year ago.

Q. (By Trial Examiner Myers) What has it been since the [330] first of the year up to two months ago?

A. It has just gradually went down.

Q. From where to where?

A. Went down from around 25 down to less than 10.

Q. It has been about 10 or less than 10 for the last two months? A. Yes.

Q. (By Mr. Harrington) Are you a member of the Kinner Motors Employees Association?

A. Not at present.

Q. Were you a member? A. Yes, sir.

Q. When did you join it?

A. On the second meeting that was held. I think that was April or May.

Q. And how long did you remain a member?

A. I remained a member up until the month of November, I believe.

Q. Did you ever make a talk to the employees in the plant about the Association?

A. Not about the Association. I made a talk to them.

(Testimony of Roy Connor Walker.)

Q. When was this talk?

A. At lunch time.

Q. When?

A. That was about—I would say two or three weeks before [331] we ever heard of the Association.

Q. What did you say in this talk?

A. I told them at that time the A.F. of L. was handbilling us at the gate. And I told the boys, that night at lunch, that we were going to have some kind of an organization pretty soon, and I thought that it would be a good idea if we had one of our own from a financial standpoint. But I told them also that I could go along with them in anything they wanted to do.

Q. Did you say anything further?

A. No, sir, except that the fact there was considerable controversy about independent organizations and other organizations.

Q. Was Mr. B. C. Johnson present when you made that talk?

A. Yes, sir. [332]

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### EARL H. FRIAR

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name?

The Witness: Earl H. Friar.

(Testimony of Earl H. Friar.)

Trial Examiner Myers: Will you spell your name for the record?

The Witness: F-r-i-a-r.

Trial Examiner Myers: Where do you live?

The Witness: 2012 Robles Drive, Glendale.

Trial Examiner Myers: You may be seated.

You may proceed, Mr. Harrington.

Q. (By Mr. Harrington) Are you employed by Kinner Motors Company? A. Yes, sir.

Q. In what capacity are you employed?

A. I as a so-called leadman in the inspection department.

Q. On what shift? A. Day shift.

Q. Who is your immediate supervisor?

A. George Williams. [338]

Q. What is his position?

A. Chief inspector.

Q. What are you clasified as?

A. I really have no classification. There is no classification. As I say, I am a so-called leadman. And that just means I help the men under me. I charge my time to the same job as they do and not to the job assigned to foreman.

Q. What does your work consist of?

A. Helping, assigning jobs, and helping inspectors in the department.

Q. Do you have any employees under you?

A. Beg pardon?

Q. Do you have any employees under you?

A. Well, there are about eight employees in the department. I wouldn't say they were under me.

(Testimony of Earl H. Friar.)

Q. Do you make recommendations for wage increases?      A. No.

Q. Have you ever done so?      A. No.

Q. (By Trial Examiner Myers) How long have you had this job you call so-called leadman?

A. It was about coincidental with the time Mr. Williams was appointed chief inspector.

Q. When was that? [339]

A. That was about the first of last year or the end of 1942; it was about that time.

Q. Early 1942?      A. Yes.

Q. Have you had the job almost two years?

A. Yes.

Q. Will you tell us what you do, from the time you get to the plant in the morning until you leave, if you are on the day shift? If you are not on the day shift, from the time you reach the plant until you leave?

A. The first thing in the morning I see all the inspectors have work to do, and when they have their jobs and are started on them, I find work for myself. Whenever an inspector in the department needs help he calls on me, and I help him. When the chief inspector leaves the department I take over the responsibilities in his place. And that is about all that consists of my day's work.

Q. Has any employee in that department ever asked you for a wage increase?

A. No, never.

Q. Or ever talked to about getting a wage increase?      A. No.

(Testimony of Earl H. Friar.)

Q. Has the chief inspector ever talked to you about any men in the department, as to their work, the quality of their work? [340]

A. Just that we have discussed it. He never asked me to recommend it. It is just as you talk about a friend or an enemy, whichever the case might be.

Q. Who is the boss of that department?

A. Mr. Williams.

Q. George Williams?

A. George Williams.

Q. Now, you say he has had that job for the same length of time as you? A. Yes.

Q. What were you doing before you became a so-called leadman?

A. I was an inspector on the bench.

Q. Who told you you were not to be an inspector on the bench anymore?

A. I am still an inspector on the bench.

Q. Who told you to take this job?

A. Mr. Williams.

Q. What did he tell you?

A. Well, as you know, they need an inspector in the department to look after the other inspectors and take some of the responsibilities off the chief inspector. And that is my job. And he gave it to me.

Q. What did he tell you when he told you——

A. He didn't say I was to be foreman. He said, "You just [341] assume responsibility."

Q. I am not interested in what he did not tell



(Testimony of Earl H. Friar.)

you. A. You mean more explicitly?

Q. What did he tell you to do?

A. Mr. Williams had the same job I had before he became chief inspector. He simply said. "You are to take my place."

Q. And you knew what that meant; is that right?

A. This was never in writing. It just meant I was to take his responsibilities, whatever they were.

Q. How long had you been working there before Williams became chief inspector?

A. Since July 1, 1941.

Q. That is about seven months, I imagine,—

A. Yes, sir.

Q. —or something like that before you got this job, as you call it, of so-called leadman?

A. Yes.

Q. You watched Williams during that length of time; is that right? A. Yes.

Q. You knew what his duties were?

A. Yes.

Q. When he became chief inspector he came around and told you to take his job; is that right?

A. Yes. [342]

Q. And you have just been describing what you have been doing for the last 22 months, also?

A. Yes.

Trial Examiner Myers: All right. Go ahead, Mr. Harrington.

Q. (By Mr. Harrington) Did you make an affidavit in this case, Mr. Friar?

A. Yes, I believe I did.

(Testimony of Earl H. Friar.)

Trial Examiner Myers: Now, wait, before you go ahead.

Q. (By Trial Examiner Myers) Now you are an inspector and inspect certain parts?

A. Yes, sir.

Q. And occasionally an inspector will want to reject a piece; is that right? A. Yes, sir.

Q. What happens when an inspector says, "This piece is not up to specifications," or whatever he says when he wants a piece rejected?

A. The final disposition is always——

Q. Now, wait. Just tell me from the bottom up. What does the inspector do?

A. Well, if an inspector has a part that is to be rejected—I could make recommendations but not——

Q. Just tell me what the man does. What does the inspector do if he gets a piece of material that he thinks should be [343] rejected; what does he do with that?

A. He may call me over and show it to me; that is the first thing he would do. And I would say, "Put that aside, for final disposition."

Q. Then what happens?

A. And the chief inspector makes the final disposition, if it is a deviation of a minor nature. If it is a deviation of a serious nature, then the piece goes to salvage board.

Q. Now, you say the chief inspector is Mr. Williams? A. Mr. Williams.

Q. And when Williams isn't there, what happens?

(Testimony of Earl H. Friar.)

A. The same thing. It would be held until he came back.

Q. For as many days as he is away?

A. Yes.

Q. The people in the other parts continue to make these pieces, even though there is a defect?

A. We have a chief engineer who formerly could make the final disposition. In the case when Mr. Williams is on his vacation the chief engineer would make the disposition.

Q. When there is a defect and Williams isn't there, do you call up the production department and tell them to reject a certain piece?

A. No, never.

Q. Whom do you tell that a certain piece is faulty?

A. That case has never come up. It has never been of such [344] a nature it couldn't wait until Mr. Williams got back, as far as **I can remember**.

Trial Examiner Myers: Go ahead.

Q. (By Mr. Harrington) I show you this affidavit. Is this your signature (indicating)?

A. Yes, it is.

Q. Is that your handwriting?

A. That is my handwriting.

Q. Are these your initials (indicating)?

A. Yes.

Trial Examiner Myers: Did you sign that?

The Witness: Yes, sir.

Mr. Harrington: Does counsel wish to see it?

Mr. Proctor: Yes.

(Testimony of Earl H. Friar.)

Mr. Collins: Yes.

Q. (By Mr. Harrington) Mr. Friar, I ask you to read the third paragraph there (indicating).

A. "I have worked at Kinner Motors——"

Q. No. Read it to yourself.

A. Oh, all right.

Q. Having read this statement or paragraph, Mr. Friar, will you now state whether or not you are a foreman?

A. I would like to qualify that. That statement was due to a false impression. It has never been official, that is, there never has been a statement to the effect, signed by the [345] plant supervisor, so that this was a false impression about just exactly what were the duties of a foreman. And I have since learned I was mistaken at the time I made that statement.

Q. What do you mean by this statement: "Until about a week ago I was not classified as a foreman"? Have you been classified as a foreman?

A. No, it was never official.

Q. Why wasn't it?

A. It would have become official if the plant supervisor had signed the statement or the authorization, but it was never signed. This statement was taken before that became official, and it was never signed.

Q. What was the authorization you refer to?

A. There was an attempt to clarify the status of certain leadmen or men who took more responsibility in the plant.

(Testimony of Earl H. Friar.)

Trial Examiner Myers: When was this?

The Witness: That was just prior to the time of this statement, if you will look at the date there. I think you will find it was perhaps within a week before, September——

Q. (By Mr. Harrington) The statement is dated September 8, 1943.

Who made the attempt to classify you?

A. I really don't know.

Q. (By Trial Examiner Myers) You say there was some card [346] that was supposed to be signed by the superintendent? Is that what you said?

A. Yes.

Q. What is that man's name, the man you just said was superintendent?

A. It would be Walter G. Milka.

Q. Did you put anything on that card, you, yourself? A. No, sir.

Q. Do you know who did? A. No, I don't.

Q. Did you ever see the card?

A. No, I think it was on the bulletin board. [347]

Q. In your affidavit you said, "I make recommendations for wage increases for the employees under my supervision, and I make these to the chief inspector."

A. That should be clarified.

Q. Will you please clarify it?

A. All right. I can't go to the chief inspector and say, "I think that man should have a 5 cent raise." I can go and say, "This man is doing fine work. I think he should have a raise." I can't

(Testimony of Earl H. Friar.)

go to him and say, "Give him a 5 cent raise." I can say, "Such-and-such a man is doing fine work and should [348] have a raise." If that is what you mean by raise. In other words, I have no authority.

Q. Do you have authority to hire and fire employees?      A. No, sir.

Q. Do you have authority to make any such recommendations?      A. No, sir.

Q. In your statement, when you said, "I have no authority to hire and fire employees, but I can make recommendations to the chief inspector," what do you mean by that?

A. That same clarification would apply there, as applied to raises, and so forth.

Trial Examiner Myers: Does that apply since you had this job as so-called leadman?

The Witness: Yes, sir.

Q. (By Mr. Harrington) When did you first hear of the Kinner Motors Employees Association?

A. Well, that is pretty hard to fix the date exactly.

Q. As closely as you can fix it.

A. It was early—early in the year, as near as I can remember.

Q. Can you place the month?

A. No, I can't.

Q. Whom did you first hear about it from?

A. Jack Williams.

Q. In what manner did you hear about it from Jack Williams? [349]



(Testimony of Earl H. Friar.)

A. He came into the inspection department and I believe it was during the smoking period and told us that he was canvassing the shop to see how many would be interested in an employees association.

Q. Did he ask you to join?

A. He didn't ask me to join. He just sounded me out, to see what my opinion was, and what my impression of the idea was.

Q. Did you join the Association at that time?

A. I paid the initiation fees. And about that time I was given the impression I was a foreman, so I haven't paid any dues since, nor I haven't attended any of the meetings.

Q. Have you ever discussed the Association with any other employees?

A. Only in a general sort of way, just like we discuss the war or any current topics.

Q. Could you place the time of these discussions?

A. No, I can't.

Q. What did you say in these discussions?

A. Well, I believe I favored the employees association.

Q. Did you say that?           A. I think I did.

Q. Did you say anything else?

A. Only along that line.

Q. Where were these conversations held? [350]

A. In the inspection department.

Q. When?

A. Usually during smoking period.

Q. (By Trial Examiner Myers): Do you smoke right in the department——

(Testimony of Earl H. Friar.)

A. I don't smoke.

Q. —during the smoking period?

A. No.

Q. Where do they go?

A. Outside the building. There are several members of the department that don't smoke.

Q. They are not allowed to smoke where they work, even during the smoking period?

A. No.

Q. (By Mr. Harrington): Were any of these discussions held during working hours?

A. No, I don't think so.

Q. Are you still a member of the Association?

A. Not an active member. I haven't paid dues since I paid the initiation fee.

Q. I see. Have you ever told any official of the Association that you wanted to withdraw from it?

A. No.

Q. You have never attempted to resign from it?

A. No. [351]

Mr. Harrington: No further questions. [352]

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### CLIFTON EDMOND MALAMPHEY

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name?

The Witness: Clifton Edmond Malamphey.

(Testimony of Clifton Edmond Malamphey.)

Trial Examiner Myers: Will you please spell your entire name for the record?

The Witness: C-l-i-f-t-o-n E-d-m-o-n-d M-a-l-a-m-p-h-e-y.

Trial Examiner Myers: Where do you live?

[357]

The Witness: 2019 Chilton Drive, Glendale.

Trial Examiner Myers: You may be seated.

You may proceed, Mr. Harrington.

Q. (By Mr. Harrington): Are you employed by Kinner Motors? A. Yes, sir.

Q. How long have you been employed by Kinner Motors? A. About 15 years, I believe.

Q. What type of work do you do?

A. Tool maker.

Q. Do you have any employees under your supervision?

A. Well, like the last witness, I am a so-called leadman in the tool room.

Q. (By Trial Examiner Myers) Who so calls you that?

A. I will tell you, it is like this: We had a large project coming up, and my foreman needed some help in making out material slips. He told me he wanted me to help him, and from then I have.

Q. And when you say you are a so-called leadman——

A. There is nothing official.

Q. How do you know it is so-called? Does anybody call you a leadman?

A. Yes, I have been called leadman by employees.

(Testimony of Clifton Edmond Malamphey.)

Q. When you refer to a so-called pretty girl, what does that mean? Somebody has said she was a pretty girl? Is that what you mean? [358]

A. They are all entitled to their opinion.

Q. What is your opinion about your job?

A. I believe I am a leadman.

Q. (By Mr. Harrington): How many employees are working in your department?

A. Eight. [359]

Q. (By Mr. Harrington): Do you exercise any supervision over those employees? A. Yes.

Q. Tell us about an average day?

A. I usually come in the morning and if there is work left [360] by the night shift and it has to go out for plating or heat treating, I make out the slips for that, and send it out. If any small jobs come in to be worked on, I make a note of it for the foreman, and when he comes in if he sees fit to do it now, he does, and if he don't he puts it aside. The tool room is more or less the heart of the plant, and that continues all day long.

Mr. Proctor: Excuse me. What did you say about a Harvard plant?

The Witness: I say it is the heart of the plant.

Trial Examiner Myers: H-e-a-r-t.

Mr. Proctor: Excuse me.

Q. (By Mr. Harrington): How many buildings are there in the plant?

A. There are four. There is one long building that has a succession of buildings that adjoin each other. There are five, that is; the test plant, too.

(Testimony of Clifton Edmond Malamphey.)

Q. Is there a part called Plant two?

A. Yes.

Q. When was that put into operation?

A. The first of this year, I believe.

Q. Who was in charge of that when it first went into operation?

A. It was under the supervision of Plant 1, as far as I know. [361]

Q. Did you ever work in Plant 2?

A. Yes, sir.

Q. When?

A. I believe it was last summer. I don't know the date.

Q. What did you do in Plant 2, when you worked there?

A. I took the place of the foreman in Plant 2, tool room. I was working under my foreman in Plant 1.

Q. Where was the foreman when you took his place?

A. He took a vacation.

Q. When you took his place, what did you do?

A. Well, just the same as I am doing now. I was still working for Ross Nichols, my boss.

Q. How many employees were there in Plant 2 at that time?

A. I would say 10.

Q. Was there any supervisor in Plant 2?

A. Was there at that time?

Q. Yes. [362]

Q. What was Hutchins' job about the first of January?

A. Well, I guess you would call him foreman in the tool room at Plant 2.

(Testimony of Clifton Edmond Malamphey.)

Q. What was your job at that time?

A. The same as it is now.

Q. What is that?           A. Leadman.

Q. All right. Now, Hutchins went on his vacation, and what happened?

A. I was taken over to Plant 2 and introduced to the fellows, and told them if they needed any help I would be there to help them.

Q. Who said that?           A. Ross Nichols.

Q. And you stayed at Plant 2?

A. Yes, sir.

Q. What else did you do?           A. That is all.

Q. You stayed in the tool room at Plant 2?

A. Yes.

Q. How long was Hutchins away?

A. Two weeks.

Q. During those two weeks, what did you do?

A. We were building jigs fixtures for Plant 2.

Q. And who had charge of the building of them?

[364]

A. I really don't know. I worked under Ross Nichols, and that is the only one I saw.

Q. What did Ross Nichols do? Did he ever say anything to you during those two weeks about the work?

A. Oh, yes, absolutely. He was over there every day.

Q. What did he say?

A. Well, he would come around and see how things were going. If they weren't right, why, he would say so. And if they were, why,—



(Testimony of Clifton Edmond Malamphey.)

Q. What I am interested in is what he said to you during those two weeks.

A. Well, just a matter of business.

Q. Yes, I know. That is what I am interested in, what he said to you about that tool room in Plant 2 during that two week period.

A. Well, he said I did a good job.  
Plant 2 during that two week period.

A. I don't think I understand what you mean.

Q. Hutchins was away? A. That is right.

Q. And you were over at Plant 2?

A. Yes, sir.

Q. In the tool room? A. Yes.

Q. Every once in awhile Mr. Nichols would come over? [365] A. That is right.

Q. On those trips did he ever say anything to you?

A. We would go around together, yes, sir. I don't know the exact words he said.

Q. I know you can't remember the exact words. Tell us what would happen when Nichols would come over in the tool room in Plant 2.

A. I would show him what we were doing, go from machine to machine and show him how the work was progressing.

Q. Yes.

A. And that is all there would be to it.

Q. Did any of the other tool men do that with Nichols? Did they go around and show him the work the other people were doing? A. No.

Q. You were the only one during that two weeks period doing that? A. Yes.

(Testimony of Clifton Edmond Malamphey.)

Q. What else did you do?

A. Well, if we needed——

Q. While Nichols was there?

A. I told him if we needed the supplies, why, tell him.

Q. Did any of the other employees, who were in that tool room, ask Nichols for supplies when you needed supplies?

A. I couldn't say. [366]

Q. Did you hear them say that?

A. No, sir.

Q. You are the only one, so far as you know who asked Nichols for supplies during that two weeks period; is that right?

A. As far as I know, yes.

Q. Now, what else took place between you and Nichols during that two weeks period?

A. Not a thing.

Q. That is about all you did with Nichols; is that right?

A. Yes.

Q. What did you do with the other men in the tool room at Plant 2?

A. When I went over there they all had their jobs. And in fact, the two weeks I was there I believe they were still working on the same job as when I came in; they were still working on the same job.

Q. What did you do?

A. I practically did nothing, except walk around.

Q. When you walked around, what were you doing? What were you looking at?

A. Blueprints, parts.

Q. What was the purpose of doing that?

(Testimony of Clifton Edmond Malamphey.)

A. Well, they had to have someone there in case the phone rang, or something. [367]

Q. Well, you didn't need the blueprints to answer the phone. I am talking about the blueprints.

A. Naturally, you are interested in what they were doing.

Q. You were over there for a purpose; weren't you?

A. I was over there to keep the tool room going, and as it was it ran smoothly and nothing happened.

Q. And you looked at the blueprint and looked at the man's work; is that correct? A. Yes.

Q. To see whether the man was doing the work according to the blueprint? A. That is right.

Q. And anything else? A. That is all.

Q. When they wanted some instructions they called on you, did they? A. Yes, sir.

Q. They didn't call on each other? A. No.

Q. Did they call on Nichols for instructions

A. I had to send for him a couple of times, yes.

Q. When you couldn't answer their questions you sent for Nichols? A. That is right.

Q. Did any of the other employees in that tool room send for [368] Nichols, that you know of, during that two weeks period? A. No, sir.

Trial Examiner Myers: Go ahead, Mr. Harrington.

Q. (By Mr. Harrington): Did Mr. Nichols take a vacation this year? A. Yes, sir.

Q. When was it? A. July.

(Testimony of Clifton Edmond Malamphey.)

Q. Who took his place while he was on his vacation?      A. I did.

Q. And what did you do at that time?

A. I did the same thing I am doing right now.

Q. Whom did you report to when Mr. Nichols was on his vacation?      A. Mr. Davey.

Q. Can you describe the work you did while Mr. Nichols was away?

A. You mean the actual work we did?

Q. That you did.

A. I did the same thing I am doing now. If a job had to be done, I would give it to one of the workmen in the tool room, and he would put the work out. [369]

Q. (By Mr. Harrington): Are you a member of the Kinner Motors Employees Association?

A. Yes, sir.

Q. When did you join it?

A. When it was first organized.

Q. Where did you join it?

A. At the plant.

Q. Who asked you to join it?

A. Jack Williams.

Q. At what time was it when he asked you?

A. What time of day?

Q. Yes. Was it during working hours?

A. I believe it was.

Q. Did you discuss the Association with anybody else before you joined it?

A. I don't believe so, not before I joined it, no,—oh, yes. Of course, the discussion was going around the shop, everyone was talking about it.

(Testimony of Clifton Edmond Malamphhey.)

Q. Did you discuss it with Mr. Nichols?

A. Yes, sir.

Q. When was that discussion?

A. Right around the first—before they had their first meeting.

Q. Where did you discuss it with him?

A. Right in the tool room. [372]

Q. Who was present?

A. I don't know. I guess——

Q. Will you relate that discussion?

Trial Examiner Myers: When he says, "Who was present?" he means in close proximity to where you and Nichols were. Is that what you mean?

Mr. Harrington: Yes.

The Witness: There was no one else in the conversation.

Q. (By Mr. Harrington) What was the conversation?

A. Well, at the time, being a leadman, I didn't know whether I could belong to the Association or not, so I asked Nick before I knew whether I could or not. I didn't ask him, I talked to him about it.

Q. What did you say?

A. I asked him if it would be advisable to join.

Q. And what did he say?

A. He said so far as he was concerned it was all right.

Q. Why did you ask Mr. Nichols?

A. Well, being a leadman you are in a funny position——

Mr. Proctor: If you Honor please, I would like

(Testimony of Clifton Edmond Malamphey.)

to interject an objection at this time, unless they can prove that Ross Nichols is the supervisor and within the terms of the law is ineligible to belong to this union; any conversation had between this gentleman and Nichols is purely hearsay.

Trial Examiner Myers: The objection is overruled. [373]

Will the reporter please read the question to the witness?

(The record was read.)

Q. (By Mr. Harrington): Do you want to continue your answer?

A. Well, as I say, you're in between the men and the foreman, himself. Well, I don't know, it seems to me it is an odd position to belong to the same organization as the men in the shop.

Q. Did Mr. Nichols say anything about leadmen in that conversation? A. No, he didn't.

Q. Have you discussed the Association with any other employees? A. Yes, I have.

Q. When?

A. Oh, when it was first organized. There were discussions going on all the time, of course.

Q. Have you discussed it with other employees all the time? A. No, I haven't.

Q. Have you discussed it with other employees since the Association was formed?

A. Why, yes, the conversation comes up every once in awhile in the tool room.

Q. When did you last discuss it with other employees? A. Well, I don't know. [374]



(Testimony of Clifton Edmond Malamphey.)

Q. (By Mr. Harrington) When was the first conversation with other employees?

Trial Examiner Myers: I will sustain the objection.

The Witness: When was the first conversation?

Q. (By Mr. Harrington) Yes, you had with other employees?

A. When the organization was first started was the first conversation.

Q. Whom did you discuss it with at that time?

A. Just the fellows in the tool room.

Q. Who were they?

A. Do you want the names?

Mr. Collins: Who were they? I didn't catch the names.

Mr. Harrington: Yes. He hasn't given them yet.

Q. (By Mr. Harrington) Who were they?

A. A fellow named Jack Shelly, Glenn Gilmore, Ralph Graytricks, Jim Davis and Louis Gilpin, Jim Calhoun, Earl Venier; that is about all, I guess.

Q. Will you describe that conversation? What did you say in that conversation?

A. Shucks, it is kind of hard to know what you said in a [375] conversation.

Mr. Collins: I object to any conversation——

Q. (By Mr. Harrington) As closely as you can recall.

Mr. Collins: ——as being incompetent, irrelevant and immaterial, as to what these employees might talk about among themselves. We could

(Testimony of Clifton Edmond Malamphey.)

be here a couple of years if every conversation the employees had about the union, among themselves, could be material.

Trial Examiner Myers: The objection is overruled.

Mr. Collins: I wish the record to show there is absolutely no foundation in it at all, as to who these men are.

Trial Examiner Myers: Overruled.

Q. (By Trial Examiner Myers): Are these men employees of the company? A. Yes, sir.

Q. In your department? A. Yes. [376]

Q. (By Mr. Harrington) Not the exact words, just as close as you can recall what you said.

A. First of all, the conversation was about why we should have an organization. And, of course, we knew that another organization was trying to get in, and the subject came up about what benefits we could derive from having an organization of our own and how much weight it would hold. Of course we have pro and con on that.

Q. What did you say?

A. I was in favor of it. [377]

Q. You have no right of discipline?

A. No, sir.

Q. You can't shift a man from the day shift to the night shift? A. No, sir.

Q. Now, when this man Bill Clark asked you about the union, did you tell him he should join it or he had to join it? A. No, sir.

Q. Did you tell him he must join it?

(Testimony of Clifton Edmond Malamphey.)

A. No, sir.

Q. Did you tell him that it was advisable that he join it? A. No.

Q. You merely said if he wanted to join it he would be welcome, I think that is the language you used? A. That is right.

Q. He was the one that asked you if there was a union? A. Yes.

Q. You didn't bring the subject up to him?

A. No, sir.

Mr. Collins: That is all.

Trial Examiner Myers: Mr. Proctor, do you have any questions?

Mr. Proctor: No questions.

Trial Examiner Myers: You are excused. You may go back to the plant. [406]

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## WILBUR J. KROENING

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

### Direct Examination

Trial Examiner Myers: What is your name?

The Witness: Wilbur J. Kroening.

Trial Examiner Myers: Will you spell your name for the record?

The Witness: W-i-l-b-u-r J. K-r-o-e-n-i-n-g.

Trial Examiner Myers: Where do you live?

The Witness: 410A Riverside, Glendale.

Trial Examiner Myers: You may be seated, sir.

(Testimony of Wilbur J. Kroening.)

You may proceed, Mr. Harrington.

Q. (By Mr. Harrington) Are you employed by Kinner Motors? A. I am.

Q. How long have you been employed by Kinner Motors? A. Just a little over two years.

Q. What is your position in the plant?

A. I am test mechanic.

A. A what? A. A test mechanic. [407]

Q. As test mechanic, what does your work consist of?

A. Well, it involves installing and removing of engines from the stand, running of them, making the required readings and adjustments.

Q. How long have you held that position?

A. I started in that department when I went there.

Q. Have you been on that job all the time?

A. That is right.

Q. Who is your immediate superior?

A. Fritz Gerber.

Q. Have you ever asked Mr. Gerber what your classification in the plant was?

A. I think I did one time when it was necessary to send some information to the Draft Board.

Q. When was that?

A. I can't say. I think it was in August some time.

Trial Examiner Myers: This year?

The Witness: The middle of August, 1943.

Q. (By Mr. Harrington) What did he tell you at that time that your classification was?

(Testimony of Wilbur J. Kroening.)

A. He told me at that time my classification was foreman.

Q. Are there any employees working under your supervision? A. Yes.

Q. How many?

A. You mean at that time or at the present time? [408]

Q. At that time?

A. Oh, I don't know, 6 or 8.

Trial Examiner Myers: How many?

The Witness: 6 or 8, some place in that vicinity..

Q. (By Mr. Harrington) Has that number changed? A. It has, yes.

Q. What was the highest number of employees that were under you?

A. I think the highest number was 9, possibly 10. I wouldn't say for sure.

Q. When was that?

A. I can't say just when that date was, I forget. It was the forepart of the summer.

Q. What was the lowest number of employees under your supervision?

A. At the present time it is 3.

Mr. Proctor: I will object to the word "supervision" wherever it appears. I move it be stricken and all answers in regard to that be stricken.

Trial Examiner Myers: It is too late now. I am not going back and pick out what you want stricken.

Mr. Proctor: The last one.

Trial Examiner Myers: I will grant the motion then.

(Testimony of Wilbur J. Kroening.)

Q. (By Mr. Harrington): What connection do you have with the work of these people? [409]

A. Beg pardon?

Q. What connection do you have with the work of these people?

A. Well, I more or less work right with them. I do approximately the same work they do. I do, however, check the engines from time to time, and more or less observe how they are going on.

Q. Do you give instructions to those people?

A. I do to new employees, yes.

Q. Do you give instructions to the other employees?

A. Not after they have once been instructed, no.

Q. Have you ever recommended wage increases for any employees?

A. I have recommended some, yes.

Q. Whom did you recommend them to?

A. Fritz Gerber.

Q. Have you ever recommended any increases for employees without consulting Gerber?

A. I never have.

Q. Do you have any authority to recommend firing of employees? A. No.

Q. Do you ever report on the work of the people? A. No.

Q. Mr. Kroening, I show you an affidavit. Is this your [410] signature (indicating)?

A. That is right.

Q. Did you sign it? A. Yes.

Q. Is this your initial on each page of this (indicating)? A. It is.



(Testimony of Wilbur J. Kroening.)

Q. Did you place it there? A. Yes.

Q. Will you read this, read it to yourself, from here down, starting here (indicating)?

A. Yes. This explains this part here (indicating).

Q. Yes. Now, having looked at this portion of your affidavit, have you recommended wage increases to Mr. Kuhn?

Mr. Proctor: I object to that on the ground it has been asked and answered. He said he had not to anybody except Gerber.

Trial Examiner Myers: He said he had.

Mr. Proctor: That is right, to nobody excepting.

Trial Examiner Myers: I will overrule the objection.

Q. (By Mr. Harrington): Have you recommended increases for employees without consulting Mr. Gerber?

Mr. Proctor: I object to this line of questioning. The affidavit itself shows in one place Mr.—

Mr. Harrington: I have had the witness read both things.

Mr. Proctor: I don't care. I object to this line of [411] questioning because the affidavit itself shows definitely Mr. Ogren has written a statement contrary to this man's testimony and has placed an X in the margin and the margin shows Mr. Ogren's statement is incorrect.

Mr. Collins: I would like the record to show an objection on the further ground that counsel has a most unique method, which is contrary to any line I have ever seen in any judicial proceeding, of con-

(Testimony of Wilbur J. Kroening.)

stantly impeaching his own witnesses. These people are his own witnesses and these statements are taken down by Mr. Ogren as an examiner of this department. It is obvious it is a very difficult thing for anybody, in interpreting something in an office, or some place where he did this, to get it correctly. These people are not business men, in the sense they are used to signing affidavits, and they think Mr. Ogren is an examiner of this Board, and when they get through——

Trial Examiner Myers: Let's not go——

Mr. Collins: I want it in the record.

Trial Examiner Myers: Let's not go into what these people had in their minds when they are talking to somebody, when you aren't even there.

Mr. Collins: I have a right to put it in my objection.

Trial Examiner Myers: I don't want to go into the question here.

Mr. Collins: I want this in my objection. I have an [412] objection.

Trial Examiner Myers: Go ahead.

Mr. Collins: Naturally, the witness thinks he has properly taken down the affidavit, and signs these affidavits. Now, what counsel is doing here is putting a man on the witness stand, as his own witness, and these witnesses have testified. Then he starts in to try to impeach them by an affidavit that was written out by Mr. Ogren; **his own witness.**

I object to it as a procedure which is contrary to every rule of evidence.

(Testimony of Wilbur J. Kroening.)

Trial Examiner Myers: The objection is overruled.

Q. (By Mr. Harrington) Did you read this affidavit before you signed it?

A. I read it and a few changes are made, which are noted on the side, and I signed it.

Q. That is right. That is what I was asking you about. Having read this affidavit, did you recommend increases for employees without consulting with Mr. Gerber?

Mr. Proctor: I object to that on the ground it has been asked and answered.

Trial Examiner Myers: Does it refresh your recollection that you did so and so? I will sustain the objection.

Q. (By Mr. Harrington): Does it refresh your recollection?

A. I made my recommendations to Fritz Gerber.

Trial Examiner Myers: Strike out the answer. I sus- [413] tain the objection to the question. Reframe your question.

Q. (By Mr. Harrington) Having read this affidavit, does it refresh your recollection whether or not you made any recommendations for wage increases without consulting Mr. Gerber?

Mr. Collins: Same objection, an attempt to impeach his own witness.

Trial Examiner Myers: The objection is overruled.

The Witness: I don't know how I can answer that question. I make my recommendations to Mr.

(Testimony of Wilbur J. Kroening.)

Gerber, and yet I make them without consulting him. After all, I talked with the man when I made the recommendations.

Q. (By Mr. Harrington) Do you make your recommendations to Mr. Gerber?

A. I do, yes.

Trial Examiner Myers: What men?

The Witness: Beg pardon?

Trial Examiner Myers: What men have you recommended to Mr. Gerber for wage increases?

The Witness: Several of them that are working in my department that I have an opportunity to see how they are getting along with the work.

Trial Examiner Myers: What happened? Do you know of any cases where they got the wage increase?

The Witness: I think in several cases they have. [414] Whether it was due to my recommendations or not I do not know.

Q. (By Mr. Harrington) Are you a member of the Kinner Motor Employees Association?

A. I haven't paid my dues for some time now or attended a meeting. I don't know whether I am classed as a member or not. I don't think so.

Q. Did you join it? A. I did join, yes.

Q. When did you join it?

A. I can't remember just what the date was on that.

Trial Examiner Myers: Do you know what month it was?

(Testimony of Wilbur J. Kroening.)

The Witness: At the present time I can't say what month it was. [415]

(Thereupon, the document referred to, heretofore marked Board's Exhibit 11, for identification, was received in evidence.) [416]

### BOARD'S EXHIBIT No. 11

I, the undersigned, hereby designate and appoint Kinner Motors Employees' Association, Inc., as my exclusive bargaining agent under and by virtue of the terms of the National Labor Relations Act.

Dated this 21 day of April, 1943.

W. J. KROENING.

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Q. (By Mr. Harrington) Have you paid dues in the Association?

A. I paid dues, I think, two different times.

Q. What times were they?

A. One was when the Association was first organized and one time since then, I can't say. I can't give the specific date in either case.

Q. Have you paid an initiation fee to the Association? A. Yes.

Q. Have you signed up any employees in the Association?

A. No, I haven't. I talked with a couple of them, but I didn't sign them up, as far as I know. I don't know whether they signed or not. [418]

Q. Who were the employees you talked to?

(Testimony of Wilbur J. Kroening.)

A. Guy Price, John Girdelstone, James Wilson.

Q. Where did you talk to them?

A. In the test department, or out at our area where we are allowed to smoke.

Q. When was it, do you know?

A. It evidently was where we smoked, because there is too much noise to talk about it right on the job.

Q. When did you talk to them?

A. I don't know.

Trial Examiner Myers: Where do these three men work?

The Witness: They work in the test department.

Q. (By Mr. Harrington) What did you say to those three men?

Mr. Collins: I object to that. It is incompetent, irrelevant and immaterial what the members of the employees might say among themselves. It certainly is binding on Kinner Motors, Inc.

Trial Examiner Myers: The objection is overruled.

The Witness: You mean in regard to the——

Q. (By Mr. Harrington) In regard to joining the Association.

A. Well, I just told them I thought it was—as far as I was concerned it was all right, that it looked like we were going to have representation of some kind and I thought Em- [419] ployees Association would be much better than some outside union.

Q. Did you give them authorization cards?

A. I did. [420]



JAMES F. BROWN

called as a witness by and on behalf of the Nation Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name?

The Witness: James F. Brown.

Trial Examiner Myers: Spell your last name for the record.

The Witness: B-r-o-w-n.

Trial Examiner Myers: Where do you live, Mr. Brown?

The Witness: 1126 East Doran, Glendale.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Harrington.

Q. (By Mr. Harrington): Are you employed by Kinner Motors, Mr. Brown?

A. I am.

Q. How long have you been employed by them?

A. Nine or ten years.

Q. What is your present position in the plant?

A. Leadman; another one.

Trial Examiner Myers: Is he going to testify to the same line? Isn't this accumulative? He joined the Association, is that it?

Mr. Harrington: Yes. [424]

Trial Examiner Myers: All right.

Mr. Harrington: And he also is an official in the Association, Mr. Examiner.

Trial Examiner Myers: All right. Go ahead.

Q. (By Mr. Harrington): How long have you

(Testimony of James F. Brown.)

been leadman?

A. Since about August 1st of this year.

Q. As leadman, what do you do?

Trial Examiner Myers: We have that so often, what these fellows testified. Is he going to testify to something else?

Mr. Harrington: Not with respect to his duties as leadman, Mr. Examiner.

Q. (By Mr. Harrington): Are you a member of Kinner Motors Employees Association?

A. I am.

Q. Are you an official of the Association?

A. Director.

Q. As Director have you attended any meetings between the Association and the company?

A. Yes, I have.

Q. How long have been Director?

A. I was in the last term, and voted in this term.

Q. What do you mean by the "last term"?

A. Well, the last six months, I believe, it was; whenever the company started in—I mean the union.

Q. In other words, have you been a Director since the [425] inception of the Association?

A. That is right, since it first started.

Q. Up to the present time? A. Yes. [426]

BRIAN C. JOHNSON

called as a witness by and on behalf of the company, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name?

The Witness: Brian C. Johnson.

Trial Examiner Myers: Will you please spell your last name for the record?

The Witness: J-o-h-n-s-o-n.

Trial Examiner Myers: Where do you live Mr. Johnson?

The Witness: 210 North Serrano, Los Angeles.

Trial Examiner Myers: You may be seated. You may proceed, Mr. Collins.

Q. (By Mr. Collins): What is your business, Mr. Johnson?

A. I am foreman at Kinner Motors, night foreman.

Q. What plant?

A. I am in Plant No. 1.

Q. Of Kinner Motors?

A. Kinner Motors' Company.

Q. Kinner Motors, Inc.? A. Yes. [450]

Q. First of all, do you know Roy Walker?

A. Oh, yes, of course.

Q. What is his work?

A. Roy Walker is a drill press operator.

Q. Is he assistant foreman?

A. I don't have any assistant foreman.

Q. Has he any authority of any kind or char-

(Testimony of Brian C. Johnson.)

acter in relation to supervision of employees?

A. Absolutely no.

Q. Did you ever hear Mr. Walker, at any time, make a speech or say a few words to several of the employees?

A. Yes. One night he did make a speech, but I wasn't there because it was just about the time for the boys to go to work after their lunch period. We have a big machine that we call [452] the whole hogger. It makes quite a noise. It makes a noise like a foghorn, but much louder. I always used to start that—we had no horn or whistle, I started that to get the boys going. I stepped over, when I saw Roy stand up there and start some kind of a gabble, I started over and started the whole hogger. It was about time for them to go to work. By the time I got down to the end of the shop and back the boys were dropping around to their various machines.

Q. Did you hear what he said?

A. I didn't hear anything he said. [453]

Q. Does it refresh your recollection whether or not Walker is in charge in your place on the nights you are absent?

A. Whatever you mean by being in charge, naturally, he is in charge in the keys, and he is the only man in the shop that—in fact, he is top man when I am gone; he is not foreman. [460]

EMMETT J. SULLIVAN

called as a witness by and on behalf of the company, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name?

The Witness: Emmett J. Sullivan.

Trial Examiner Myers: Spell your last name for the record.

The Witness: S-u-l-l-i-v-a-n.

Trial Examiner Myers: Where do you live?

The Witness: 1420 North Columbus, Glendale.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Collins.

Q. (By Mr. Collins): What is your business, Mr. Sullivan? [466]

A. My title is director of personnel for Kinner Motors, Inc.

Q. And how long have you been in that capacity? A. Since August 1, 1942.

Q. How long have you been employed by Kinner Motors, Inc.?

A. Since that same date.

Q. The same date? A. Yes. [467]

Q. I show you Orville Gilbert's record, and ask you to tell us his personnel record.

A. Beginning March 17, 1941, Mr. Orville Gilbert has been a boring machine operator from March 17th until November 20, 1942. At that time he was classified as a boring machine leadman. From 1942, November 20th, to July 16, 1943,

(Testimony of Emmett J. Sullivan.)

he was reclassified to an all round machinist, which rate he now carries. [474]

Q. How about Albert William Gardiner?

A. Albert William Gardiner, March 17, 1941, to July 16, 1943, as a machinist; and classified on July 16th to a leadman on engine lathes; from July 16th to November 1, 1943, reclassified to all round machinist, and the leadman classification cancelled. That was written on that one.

Q. Wilbur John Kroening?

A. November 26, 1941, hired as an engine test mechanic; to July 23rd; then we show a reclassification as a sub-foreman of the test stands.

Mr. Harrington: What year was that?

The Witness: July 23, 1942.

Mr. Harrington: 1942.

The Witness: That is right. Sub-foreman of the test stands; carried that rating to January 1, 1943; reclassified to test stand operator.

Mr. Harrington: What was that last date?

The Witness: January 1, 1943. Reclassified to test stand operator; carried that test stand operator classification until August 16, 1943; reclassified to leadman; that is [475] the classification he now holds.

Q. Thomas H. Mills.

A. Thomas H. Mills. Hired February 25, 1943, as machinist Class C. July 16—

Trial Examiner Myers: What does Class C mean?

The Witness: That is the beginning of the classi-



(Testimony of Emmett J. Sullivan.)

fication, the lowest. He carried that classification until July 16, 1943; he was then classified as a milling machine operator. His rate is irrelevant, but under date—he carried the milling machine operator rate until October 4, 1943; and the only other record shows he was transferred from the night to the day shift and given a five cent bonus. He is still a milling machine operator; that is his present classification.

Trial Examiner Myers: You pay the night men——

The Witness: 5 cents an hour——

Trial Examiner Myers: More?

The Witness: Yes.

Q. (By Mr. Collins): Mr. Earl Herman Friar?

A. Going back to the beginning, July 1, 1943, Earl Friar hired as an inspector; he carried that rating until August 16, 1943, when he was made—wait—this is August 16th. This doesn't jibe.

Q. This is November and this is August (indicating)?

A. There are two changes. August 16th. There is no change [476] showing this (indicating).

Q. This must be here, the effective date.

A. November 16, 1943.

Q. Speak up so they can hear you.

A. Until November 16, 1943, he was classified as a receiving inspection foreman.

Trial Examiner Myers: From when to when?

The Witness: From August 16th—August 16th

(Testimony of Emmett J. Sullivan.)

was his last rating. On November 16th he was reclassified as a receiving inspection foreman.

Trial Examiner Myers: Let us take Friar's record again. What was this now?

The Witness: From July 1, 1941, he was classified as an inspector; carries that rate, goes through all his hourly rate changes, same rating until November 16, 1943. He was made a receiving inspection foreman then, tool, gauges and jigs inspector.

Trial Examiner Myers: What is Williams' classification, George Williams?

The Witness: George Williams is the chief inspector of Plant 1. We have two chief inspectors, one at each plant.

Trial Examiner Myers: How long has George Williams had that classification?

A. Since 1941—since April, 1941. George was made chief inspector of Plant 1. George has been chief inspector since [477] 1941 of Plant 1. [478]

Q. (By Mr. Harrington): I show you the personnel folder of Mr. Wilbur Kroening.

A. Yes. [496]

Q. What was his occupation on March 16, 1943?

A. Test stand operator; changed to same test stand operator but put in charge of the test crew under Fritz Gerber, who is the chief—put in charge——

Q. On change of status notice of May 16, 1943, what is listed as his classification?

A. A merit increase purely, no change of classification.

(Testimony of Emmett J. Sullivan.)

Q. What is listed as the classification?

A. Test stand operator Class A.

Q. Did he hold the same position as on March 16, when he was listed as being in charge of the test crew?

A. He is still a test stand operator, but he was put in charge of the test stands. Now, they didn't call him a foreman or a leadman, or anything like that on that change of status.

Q. I didn't ask you that. On May 16th, when his next change of status notice came, did his duties change?

A. It doesn't show it.

Trial Examiner Myers: Well, did it?

The Witness: I wouldn't know, sir. All I can tell is from these——

Q. (By Mr. Harrington): What is his occupation as listed on May 16, 1943?

A. A test stand operator Class A.

Trial Examiner Myers: That is when he got a merit in- [497] crease?

The Witness: Yes, sir. August 16, that is where he was made leadman. The next time it came through they made him a leadman. That is what he is now.

Q. (By Mr. Harrington): From March 16 to August 16 he was in charge of a test crew under Gerber?

A. According to the change of status notice he was in charge of the test crew; that is correct.

Q. On August 16th he was made the leadman?

A. Yes, officially.

(Testimony of Emmett J. Sullivan.)

Trial Examiner Myers: That is all 1943?

The Witness: Yes.

Q. (By Mr. Harrington): On August 16th, when he was made a leadman, was that the last time the classification was changed?

A. That is the last time I have on record.

Q. I show you the personnel file of Earl Friar. On August 16, 1943, what was his classification?

A. He was precision inspector Class A.

Q. What was his change of status for November 16, 1943?

A. On November 16th he was still an inspector—receiving inspection foreman of tools, gauges and jigs. That is his classification he now holds.

Q. Isn't it true on November 16, 1943, he was changed from receiving inspection foreman to tool, gauge and jib inspector? [498]

A. It would appear there. There is no change to show that.

Q. Isn't that what the change of status notice says?

A. Change of status notice says he was made a receiving inspection foreman on November 16th. There isn't—

Trial Examiner Myers: From what?

Q. (By Mr. Harrington): Doesn't it show on November 16th he was changed from receiving inspection foreman to tool, jig and gauge inspector?

A. That is correct. [499]

Q. I show you the personnel record of Robert

(Testimony of Emmett J. Sullivan.)

L. Stevens. On his change of status notice, dated May 1, 1943, what is given as the reason for the change?

A. Given as the reason for the change, a merit promotion to receiving clerk in charge, and salary increase within the established rate range.

Trial Examiner Myers: How many employees were there in that department at that time?

The Witness: What date, again? I want to be sure of that. May 1st. I would say about 8 in the receiving department.

Trial Examiner Myers: That is on one shift? You only have that open on one shift?

The Witness: Yes, one shift proposition. [501]

Q. (By Mr. Harrington): Showing you the date in the upper right-hand corner of the change of status notice, April 21, 1943, at that time was Mr. Stevens receiving clerk in charge?

A. On the date of April 21st Mr. Stevens' official classification was a checker in the receiving department.

Q. Who placed this reason for the change?

A. Mr. George Blauvalt, head of the department.

Trial Examiner Myers: What does that mean, that he was put in charge of the department?

The Witness: He was made a clerk in the B classification. His classification changed under that date from a checker Class C to a receiving clerk Class B, from 80 to 90 cents per hour.

Q. (By Trial Examiner Myers): That is where

(Testimony of Emmett J. Sullivan.)

they have the notation that he was put in charge of the department?

Mr. Collins: I don't believe that is correct. There was no notation he was put in charge.

Q. (By Trial Examiner Myers): Read what was said.

A. "Reason for the change: Merit promotion to receiving clerk in charge, and salary increase within established rate range."

Q. Does that mean in charge of the department?

A. In charge of the clerks in his classification.

Q. You say there were 8 clerks at that time?

A. As near as I can, without an actual count.

[502]

Q. Approximately?

A. Approximately there would be about 8 people in that department. They wouldn't be clerks. Two or three—there would be two truck drivers, a couple of checkers and one or two clerks, something like that.

Q. Now, when was that change made, as of May 1, 1943?      A. May 1, 1943.

Q. That slip is dated April 26, 1941?

A. April 21st.

Q. How many people in that department at the present time, do you know, approximately?

A. It has all been new administration. It has all been revised. I think there are only about three over there, three or four. They revised that; an entirely new set-up [503]



BOARD'S EXHIBIT No. 13

Plant 1

Foremen

Kenneth Freese

Harry Swanson

Howard Williams

Fred Strehlein

Ross Nichols

Ferdinand LaCom

Bud Sorenson

Brian Johnson

Leadmen

Jack Williams

Albert Gardiner

Warren Durbin

Homer Watters

George Orrill

Plant 2

Foremen

Paul Hawkins

Walter Ferguson

Dale Evans

Leadmen

Jack Gilbert

James Brown

Ray Wildman

William Suttie

Howard Sharrar

Joseph Sickells

Frank Gifford

Thomas Mills

Joseph Wilson

Chief Engineer—Jack Kuhn

Test Superintendent—Fritz Gerber

Foremen—

Earl Friar

Charles Noble

W. J. Kroening

Charles Pritchard.

OK as of 9/9/43. E. J. SULLIVAN

Mr. Collins: Yes. I have a motion, if the Court please. I wish at this time, for the record, to renew my motion of dismissal which I made at the very first of the case, and that it is not disclosed—there are no new points raised, no new evidence given that would change what I said is the basis of my motion at the very start of this matter, to-wit: This proceeding was not brought within the ninety days of the contract. As a matter of fact, there is no charge which was filed within that time; that the charge which was filed by the union, the A. F. of L. union, was filed prior to the execution of the agreement. And under those circumstances I believe this proceeding is without jurisdiction.

I renew that motion.

Trial Examiner Myers: Very well. I will reject it, sir. I will deny that motion. You are moving to dismiss?

Mr. Collins: Yes, I would like to add to that——

Trial Examiner Myers: The motion to dismiss on the [559] ground the rider is a bar to these proceedings is denied.

Mr. Collins: I wish, if the Court please, to move to dismiss upon the ground that the complaint itself, in this action, alleges and was also stipulated by all parties that the Kinner Motors Employees Association, Inc. is a duly organized labor organization under Subdivision 5 of Section 2 of the Act.

[560]

I can't close, if the Examiner please, without still harping on my theory of the law in this case

in connection [586] with the lack of jurisdiction.

I have read that law again and it seems to me so clear that there just couldn't be any question in it, in this particular case. For two reasons: First of all, no complaint was filed and I don't believe that any Federal Court, when this matter is passed upon by a Federal Court, will hold that a charge filed with the Board is tantamount and equal to a complaint that is issued by the Board.

Now, we have a rule of interpretation of statutes that you can't read into it something—particularly a Penal statute—you can't read into the statute something that isn't there by import or by some character or language. There isn't a word in this about a charge. It uses the language "complaint."

We must presume, when our Congress passed that, certainly it chose and used the language that it desired to use. We are not bound by the Comptroller General's attempt to use his own argument as to why they should have used another word: why they should have said, "charge." All we have to consider is that they didn't use "charge" and used the word "complaint," so that even there legally I can't possibly see how there is any jurisdiction in this particular case. But the charge was not filed to the particular contract that is a bona fide bargaining agreement between these people. It was filed long prior to the execution of the contract, and no charge was [587] filed, although they had a right to do it. No charge was filed by the A. F. of L. against the contract itself. I think that, in itself, is determinative of this matter.

Again I want to call your attention to the point which I made by way of a motion, which you said, and I can't find the authorities—I haven't been able to find them—your Honor spoke of the other day; there were authorities. But it seems to me if in the complaint they allege that this is a valid union, and then they stipulate it is a union within the purview of sub-section 5 of Section 2, I can't possibly see how once they have stipulated to it, before this Examiner, how they can then turn around and say it is not valid, but is an invalid Association. [588]

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[Endorsed]: No. 10956. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Appellant, vs. Kinner Motors, Inc., Appellee. Transcript of Record. Upon Petition for Enforcement of an Order of the National Labor Relations Board.

Filed December 28, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.